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ORDINANCE NO. 1867

AN ORDINANCE ESTABLISHING NOMINATION PROCEDURES FOR THE OFFICES OF MAYOR AND CITY COUNCILOR AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Eligibility**. Any person who is eligible pursuant to Section 12 of the Woodburn City Charter may be nominated for an elective City position.

Section 2. **Nomination Procedure**. Nomination shall be by petition specifying the position sought and signed by the requisite number of electors as that term is defined by Section 2 of the Oregon Constitution. Such petition shall be signed by not fewer than twenty (20) electors. No elector shall sign more than one such petition for the same office. If an elector signs more than one petition for the same office the signature of the elector shall be valid only on the first petition filed. The signatures of a nomination petition need not all be appended to one paper. However, an affidavit of the circulator of the petition shall be attached to each separate paper of the petition indicating the number of signers of the paper and stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. The signer's place of residence, identified by its street and number or other sufficient description shall accompany each signature.

Section 3. **Filing**. All nomination papers shall be assembled and filed with the City Recorder as one instrument not earlier than 250 nor later than 70 days before the election.

Section 4. **Duty of the City Recorder**. The City Recorder shall make a record of the exact time at which each petition is filed and shall take and preserve the name and address of the person who filed the petition. Each petition shall be accompanied by the acceptance of the nominee which shall be endorsed upon the petition and signed by the nominee. If the petition is not signed by the required number of qualified electors, or does not contain the endorsed acceptance of the nominee, the Recorder shall notify the nominee and the person who filed the petition within five (5) days after the filing. If the petition is insufficient in any other particular, the Recorder shall return it immediately to the person who filed it, certifying in writing wherein the petition was insufficient. Such deficient petition may be amended and filed again as a new petition, or a different petition for the same candidate may be filed within the regular time for filing nomination petitions. Upon determination that the petition is in all respects sufficient, the Recorder shall cause the nominee's name to be printed on the ballots. The nomination petition for a successful candidate at an election shall [be] preserved in the office of the Recorder until the term of office for which the candidate is elected expires.

Section 5. [Emergency clause.]

Passed by the Council April 23,1984, and approved by the Mayor April 24, 1984.

ORDINANCE NO. 1998

AN ORDINANCE ESTABLISHING A STREAMLINED CIVIL INFRACTION PROCEDURE TO ENFORCE CITY ORDINANCE VIOLATIONS; PROVIDING A SCHEDULE OF FORFEITURES FOR THE VIOLATION OF SAID ORDINANCES; REPEALING ORDINANCE 1610; AND DECLARING AN EMERGENCY.

[Where as clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions.** For the purpose of this ordinance the following mean:

(A) Civil Infraction - Commission of an act or omission to act in a manner prescribed by this ordinance or other city ordinance constituting breach or infringement of a section of a city ordinance or of this ordinance constitutes a civil infraction and shall be handled in accordance with the procedures established by this ordinance. Civil infraction does not include violations of other city ordinances where a criminal penalty is provided. When an infraction is of a continuing nature, except where specifically provided otherwise, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist, and a separate citation may be filed for each such infraction.

(B) Enforcement Officer - The City Administrator or any designee appointed by the Administrator to enforce this ordinance.

(C) Forfeiture; Forfeiture Schedule - The only penalty to be imposed for an infraction is a monetary penalty called a forfeiture. The forfeiture to be assessed for a specific infraction will be determined pursuant to specific provisions within the ordinance defining the infraction, or the forfeiture schedule found in Section 5 of this ordinance. The procedure prescribed by this ordinance shall be exclusive procedure for imposing a forfeiture; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the city be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(D) Person - Any natural person or persons, firm, partnership, association or corporation.

(E) Responsible Party - The person responsible for curing or remedying an infraction and includes:

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

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

(3) The person who is alleged to have committed or authorized the commission of the infraction.

Section 2. <u>Infraction Procedure</u>.

(A) Issuance of uniform citation and complaint;

(1) When a violation of a city ordinance occurs a uniform infraction citation and complaint signed by the enforcement officer may be filed with the municipal court charging the responsible party with the civil infraction and setting a date for the responsible party to appear before the municipal court to answer said complaint.

(2) The enforcement officer shall prescribe the form of the uniform infraction citation and complaint, but it shall consist of at least three pages. Additional pages may be inserted for administrative purposes by those charged with the enforcement of the ordinances. The required pages are:

(a) the complaint;
(b) the city department record; and
(c) the summons.

(3) Each of the three pages shall contain the following information:

(a) the name of the court and the court's file number;
(b) the name of the person cited;
(c) the infraction with which the person is charged;
(d) the date, time and place the infraction occurred, or if the infraction is of a continuing nature, the date, time and place the infraction was observed by the enforcement officer, or the citizen signing the complaint;
(e) the date on which the citation was issued;
(f) the scheduled forfeiture for the alleged infraction;
(g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of certification that the person signing the complaint states that the person has reasonable ground to believe, and does believe that the person cited committed the infraction.

(5) The summons shall also contain notice to the person cited that a civil complaint will be filed in the municipal court of the city.

(B) <u>Summons</u>. Service of the uniform citation and complaint may be made by personal service upon the responsible party or by any other method provided for in this section. Service may be made outside the City and outside the State of Oregon. Service of the uniform citation and complaint may be made in accordance with any method of service permitted in the Oregon Rules of Civil Procedure, including but not limited to service by mail under ORCP 7D(2)(d). (Section 2 (B) amended by Ordinance 2478 passed June 13, 2011 and effective June 13, 2011)

(C) Answer

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

(2) If the person alleged to have committed an infraction admits the infraction, the person may complete the appropriate answer on the back of each summons and forward the summons to the municipal court. Cash, check or money order in the amount of the forfeiture for the infraction alleged as shown on the back of the summons shall be submitted with the answer. Upon receipt of the forfeiture, an appropriate order shall be entered in the municipal court records.

(3) If the person alleged to have committed the infraction denies part or all of the infraction, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the municipal court. The municipal court shall notify the person alleged to have committed the infraction by return mail of the date of the hearing. The security deposit may be waived in whole or in part at the discretion of the municipal court for good cause shown and upon written application of the person alleged to have committed the infraction setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the infraction will attend the hearing when scheduled.

(D) Hearing.

(1) Every hearing to determine whether an infraction has been committed shall be held before the municipal court without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense.

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

(4) If the defendant alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, the defendant must so request in writing from the court.

(5) The complainant shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

(6) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the infraction as alleged in the complaint was committed. When the infraction has not been proven, an order dismissing the complaint shall be entered in the municipal court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the infraction was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the infraction alleged.

(7) Upon a finding that an infraction has occurred, the court shall assess a forfeiture pursuant to the schedule established in accordance with this ordinance, plus court costs and witness fees. The municipal court judge is authorized to set reasonable court costs including security for court fees by court order.

(8) Any written documents, correspondence or physical evidence associated with the matter shall be retained by the municipal court until disposed of by order of the municipal court

(9) The determination of the municipal court shall be final. Review of the court's determination shall be to the circuit court by writ of review pursuant to ORS Chapter 34.

Section 3. <u>Enforcement</u>.

(A) If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgment shall be entered for the schedule forfeiture applicable to the charged infraction. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the municipal judge granted by the charter of state law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this ordinance.

(B) Any forfeiture assessed is to be paid no later than ten days after the receipt of the final order declaring that forfeiture. Such period may be extended upon order of the municipal judge.

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

Section 4. <u>Lien Filing and Docketing</u>.

(A) When a judgment is given in municipal court in favor of the city for the sum of $10.00 or more, exclusive costs or disbursements, the enforcement officer may, at any time thereafter while the judgment is enforceable, file with the City Recorder a

certified transcript of all those entries made in the docket of the municipal court with respect to the action in which the judgment was entered.

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

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

(D) Whenever a judgment of the municipal court which has been entered pursuant to this section is renewed by the municipal court the lien established by subsection C of this section is automatically extended ten years from the date of the renewal order.

(E) The City Recorder may file the transcript of the judgment with the county clerk for entry in the judgment docket of the circuit court.

Section 5. Schedule of Forfeitures.

Schedule of Forfeitures.

(A) Infractions as classified for the purpose of determining forfeitures in the following categories:

(1) Class 1 civil infractions.
(2) Class 2 civil infractions.
(3) Class 3 civil infractions.
(4) Class 4 civil infractions.
(5) Class 5 civil infractions.

(B) As assessment of a forfeiture for an infraction shall be an assessment to pay an amount not exceeding:

(1) $750.00 for a class 1 civil infraction.
(2) $500.00 for a class 2 civil infraction.
(3) $250.00 for a class 3 civil infraction.
(4) $125.00 for a class 4 civil infraction.
(5) $100.00 for a class 5 civil infraction.

(C) Infraction of specific Woodburn ordinances are classified as follows:

Ordinance No.		Class
583		4
1015		4
1084		1
1187		4
1358		2
1638	Section 21/Vicious Dogs	2
	Remainder of Ordinance	5
1641		2
1790		1
1795		1
1866		2
1908		3
1917		1
1925		2
1957		5
1965		3
1988		5
1999		1
2399		2
2057		2
2060		1, 4
2084		4
2122		2
2173		1
2225		2
2262		5
2285		4
2293		1
2312		1
2313		1
2336		1

(D) Where an ordinance of the City of Woodburn provides that an ordinance violation may be processed in accordance with the Civil Infraction Ordinance, but does not classify the civil infraction, this unclassified civil infraction shall constitute a Class I civil infraction under this ordinance.

Ordinances enacted after the effective date of this ordinance which require a forfeiture provision for their enforcement shall incorporate the infraction procedure set out herein and classify violations thereof in accordance with Section 5 of Ordinance 1998.

[Section 5 as amended by Ordinance No. 2362, passed May 24, 2004.]

Section 6. **Severability**. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 7. **Non-Exclusive Remedy**. The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes intended to alleviate ordinance violations.

Section 8. **Repeal and Saving Clause.**

(A) Ordinance 1610, as amended, is hereby repealed.

(B) After the effective date of this ordinance, any reference to Ordinance 1610 contained in the ordinances or resolutions of the City of Woodburn shall be construed by any court to be a reference to the provisions of this ordinance.

(C) Notwithstanding subsection A of this section, Ordinance 1610 shall remain valid and in force for the purpose of allowing the prosecution and punishment of a person who violated Ordinance 1610 prior to the effective date of this ordinance.

Section 9. [Emergency clause.]

Passed by the Council May 23, 1988, and approved by the Mayor May 23, 1988.

ORDINANCE NO. 2182

AN ORDINANCE ADOPTING BYLAWS GOVERNING PROCEEDINGS OF THE CITY COUNCIL, REPEALING ORDINANCE NO. 1971, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose**. The purpose of this ordinance is to prescribe rules to govern all meetings and proceedings of the Council, consistent with all provisions contained in the Woodburn City Charter and Oregon state law. The intent of this ordinance is to supplement the Woodburn City Charter to allow implementation of any substantive charter requirements. In this respect, provisions of the Woodburn City Charter and Oregon state law override and supersede any conflicting provisions of this ordinance. if any section or subsection of this ordinance is determined by a court to be invalid or unenforceable, then such section or subsection shall be severed from this ordinance and the remainder of this ordinance shall remain in full force and effect.

Section 2. **Ordinances and Resolutions.**

A. Proposed Ordinances and Resolutions (Council Bills) may be introduced by any member of the Council.

B. An Ordinance shall receive two readings prior to final passage.

C. Readings of an Ordinance may be by title only unless a Councilor requests that the Ordinance be read in full.

D. A Resolution shall receive one reading prior to final passage and this reading shall be by title only unless a Councilor requests a full reading.

E. Procedure.

(1) A Councilor presents a proposed Ordinance or Resolution (Council Bill). (No motion is necessary since no vote is required for introduction of a bill, e.g. "Mr./Madam Mayor, I introduce Council Bill _____.")

(2) The Mayor asks that the Council Bill be read in full/or by title only if there is no objection from the Council.

(3) The Council Bill is read as requested.

(4) If the Council Bill is a proposed Resolution, the Mayor asks if there is any discussion. After discussion and motions, if any, the Mayor shall call for a vote on the Resolution. Upon the request of any Councilor, the ayes and nays shall be taken and entered in the record.

(5) If the Council Bill is a proposed Ordinance, the Mayor asks that the Council Bill be read a second time by title only if there are no objections from a Councilor.

(6) The Council Bill (proposed Ordinance) is read as requested.

(7) The Mayor then asks if there is any discussion on the Council Bill (proposed Ordinance). After discussion and motions, if any, the Mayor shall call for a vote and the ayes and nays shall be taken and entered in the record.

F. A Resolution shall be declared passed by affirmative vote of a majority of the Councilors present at the meeting.

G. An Ordinance may be enacted in a single meeting by unanimous consent of the Councilors present. If not approved by unanimous consent of the Councilors present, the Ordinance shall be read and voted upon on a different day at another meeting, and enacted if a majority of the Councilors present at that meeting vote affirmatively.

H. All Resolutions and Ordinances passed or enacted by the Council are subject to veto of the Mayor as provided in Chapter V, Section 20, of the Woodburn City Charter.

I. Except in extreme emergencies, copies of Council Bills shall be provided the Mayor and members of the Council at least 48 hours prior to any session at which they could be introduced.

Section 3. <u>Meetings</u>.

A. A majority of the incumbent members of the Council constitutes a quorum.

B. The Council shall hold a regular meeting at least once each month in the city at a time and place it designates.

C. The Council may hold a special meeting at the call of the Mayor or at the request of three Councilors in accordance with Chapter IV, Section 13 of the Woodburn City Charter.

Section 4. <u>City Officers</u>.

A. Mayor

(1) The Mayor shall preside over all Council meetings at which he/she is present in accordance with the Woodburn City Charter.

(2) Consistent with the Woodburn City Charter all appointments by the mayor are subject to Council confirmation.

(3) The Mayor shall make a good faith effort to confer with the Council about who he/she will appoint to a committee so that any comments, objections, etc. Of individual councilors may be considered by the Mayor prior to the appointment. Both the Mayor and Council shall make every possible effort to avoid embarrassment to appointees.

(4) In the event that the Council does not confirm any appointment made by the Mayor and submitted to the Council for consideration, the Mayor shall within 10 days make a new appointment and submit it to the Council.

B. The Council President shall be elected by the Council and shall serve in accordance with the Woodburn City Charter.

Section 5. <u>Agenda</u>.

A. Matters to be considered by the Council shall be placed on an agenda to be prepared by the Mayor and the City Administrator. Any Councilor desiring to have a matter considered by the Council shall advise the Mayor or City Administrator to place it on the agenda.

B. In addition to the written agenda, any Councilor may bring items to the attention of the Council during a meeting, in accordance with the provisions of this ordinance, the Woodburn City Charter and state law.

C. At the discretion of the presiding officer and in accordance with state law, any visitor may speak on any matter of city business. The presiding officer may establish time limits on such comments by visitors to insure that all persons desiring to be heard shall have the opportunity to speak.

Section 6. <u>Public Hearings.</u>

A. Consistent with the provisions of state law, the following procedure shall be used at all public hearings:

(1) Public hearing opened

(2) Declarations:

(a) The presiding officer will ask if any member of the Council has a <u>conflict of interest</u> in the matter.

(b) The presiding officer will ask if any member of the Council has had any <u>EX-PARTE contact</u> he wishes to disclose.

(c) The presiding officer will ask if anyone from the audience wishes to <u>challenge any member of the council</u> from acting on the matter.

(3) Staff report
(4) Testimony by applicant

(5) Testimony by proponents

(6) Testimony by opponents

(7) Rebuttal by applicant

(8) Hearing is closed

(9) COUNCIL Discussion

(10) Final decision (or motion to direct staff to draft ordinance for CONSIDERATION at next Council meeting if land use decision is involved)

B. Any questions by the Mayor and Council addressed to individuals giving public testimony must be asked to these individuals prior to the close of the public hearing.

Section 7. <u>Roberts Rules of Order</u>.

A. Roberts Rules of Order, Newly Revised, shall be used as the guideline for conduct of Council meetings, except in those cases where specific provisions contrary to Robert Rules are provided herein.

B. The Chair will not condone any inappropriate conduct in a meeting. Meetings will be conducted in an orderly and dignified manner.

C. If in the chair's judgment any person is not in accordance with these rules, that person will be asked to leave.

Section 8. <u>Miscellaneous Rules of Procedure</u>.

A. In all matters to be heard by the Council, the City Administrator or member of his staff shall be given the first opportunity to speak thereon. Proponents of the matter before the Council shall be afforded the next opportunity to speak thereon. Opponents of the matter before the Council shall be afforded the opportunity to speak thereon after proponents have completed their presentations. Councilors have the privilege of asking questions at any time. After all presentations are complete, the Council may discuss the matter and take action as desired.

B. Official "public hearings" shall be conducted as prescribed by law and/or current regulations governing said hearings. All persons attending official "public hearings" will be given reasonable time to present their arguments, but such persons are requested to avoid repetitious and irrelevant statements.

C. Visitors desiring to speak will formally address the chair, and visitors will identify themselves by their name, address, and whether they represent a person, group or organization.

D. If at all possible, all regular and special Council meetings shall be tape recorded. Council members, staff and visitors shall use the microphones provided for that purpose. The visitors microphone shall not be removed from its stand without permission of the presiding officer.

Section 9. **Suspension of the Rules**. In accordance with the Woodburn City Charter, the rules contained in this Ordinance may be suspended by the concurrence of a majority of the Council present at a Council meeting.

Section 10. **Repeal of Ordinance 1971.** Ordinance 1971 is hereby repealed

Passed by the Council October 28, 1996, approved by the Mayor October 29, 1996.

ORDINANCE NO. 2225

AN ORDINANCE ASSERTING JURISDICTION AND EXERCISING AUTHORITY OVER PUBLIC RIGHTS-OF-WAY; REQUIRING PERMISSION TO USE SAID RIGHTS-OF-WAY; REGULATING THE USE OF SAID RIGHTS-OF-WAY; REPEALING ORDINANCE NO. 2185 AND DECLARING AN EMERGENCY.

[Whereas clauses.]

Section 1. Definitions. For the purpose of this ordinance, the following mean:

City: The City of Woodburn, Oregon.

Person: Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

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 subsurface and air space over these areas.

Within the city: Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

Section 2. Jurisdiction. The city of Woodburn has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city charter and state law.

Section 3. Scope of Regulatory Control. 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.

Section 4. City Permission Requirement. 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, licenses and permits.

Section 5. Obstructions Prohibited. No person shall obstruct, cause to be obstructed, assist in obstructing or interfere with a public right-of-way by depositing or storing personal property or other material on the right-of-way or by any other manner obstructing or interfering with the right-of-way without first obtaining city permission. This section shall not apply to the delivery of merchandise, equipment, or services provided the delivery is accomplished with a reasonable time.

Section 6. Deposit of Materials Prohibited. No person shall deposit garbage, earth, debris, or rubbish of any kind on a public right-of-way without first obtaining city permission.

Section 7. **Obligations of the City.** 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.

Section 8. **Penalty**. Violation of this ordinance constitutes a class 2 civil infraction and may be dealt with according to the procedures established by Ordinance 1998.

Section 9. **Non-Exclusive Remedy**. The penalty described in this ordinance shall not be the exclusive remedy of the city for the violation of the ordinance. The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes intended to alleviate ordinance violations.

Section 10. **Repeal.** Ordinance No. 2185 is hereby repealed.

Section 11. **Severability.** Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or part of sections.

Section 12. [Emergency clause.]

Passed by the Council and approved by the Mayor August 10, 1998.

ORDINANCE NO. 2265

AN ORDINANCE CREATING A LIBRARY BOARD, DEFINING ITS DUTIES AND RESPONSIBILITIES, AND REPEALING ORDINANCE NO. 1797 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose**. The Woodburn Public Library Board is hereby created to advise and make recommendations to the Community Services Director and the Mayor and City Council, on all matters related to the management of the library and rules and regulations governing the use of the library.

[Section 1 as amended by Ordinance 2412, passed November 13, 2006.]

Section 2. **Board Membership**. The Board shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and shall be responsible to the Mayor and City Council. Six (6) members shall be appointed from resident voters of the City or of the urban growth boundary. The seventh member shall be appointed from the student body of Woodburn High School and need not be a resident voter. Members shall possess a background and interest in library science and programs, library management and operations, or literacy. Members shall serve without pay. Terms of office, excepting that of the member appointed from the student body from Woodburn High School, shall be four (4) years from the date of appointment and staggered so three positions will expire every two years. The term of office for the member appointed from Woodburn High School shall be one (1) year from the date of appointment, which shall be in August. All other appointments shall be made annually, in December, or upon the expiration or other termination of the member's term of office. Each member of the Committee serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause or hearing. Members may be removed by the Mayor pursuant to City resolution. In addition to the appointed members, the Mayor or the Mayor's representative and the Director will serve as ex-officio members.

[Section 2 as amended by Ordinance 2412, passed November 13, 2006.]

Section 3. **Meetings**. The Board shall meet at such times as the Board may determine are appropriate and necessary. All Board meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

Section 4. **Officers**. The Library Board shall, at its first meeting, elect a chairman and such other officers as the Board may deem appropriate. Officers shall have such duties and authority as the Board shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

Section 5. **Board Responsibilities**. The Library Board shall have the responsibility for advising and making recommendations to the Community Services Director and to the Mayor and Council, on all matters pertaining to the planning, acquisition, development and management of the library.

[Section 5 as amended by Ordinance 2412, passed November 13, 2006.]

Section 6. **Budget**. The Library Board shall participate in the preparation of the annual budget and shall recommend to the Budget Officer a budget for the expenditure of all funds produced by tax or other means for the development, promotion and management of the library in the City of Woodburn.

Section 7. **Rules and Regulations**. The Library Board shall recommend to the Mayor and City Council reasonable rules and regulations governing the use of and proper conduct in the library in the City of Woodburn.

Section 8. **Supervision of Director**. The City Administrator shall have the responsibility for the hiring, termination, discipline and any other personnel actions affecting the Community Services Director. The Board shall act in an advisory capacity in the selection, discipline, or termination of the Director.

[Section 8 as amended by Ordinance 2412, passed November 13, 2006.]

Section 9. **Internal Administrative Policies and Procedures**. The City Administrator shall be the fiscal and internal administrative agent for the library and the department shall operate in conformance with City administrative procedures including those pertaining to the following:

(1) Personnel, including recruitment, selection, classification and pay for department staff;

(2) Personnel matters, including discipline and grievances;

(3) Receipt, disbursement and accounting for monies;

(4) Maintenance of general books, cost accounting records, and other financial documents;

(5) Purchasing;

(6) Budget administration; and

(7) Operation and maintenance of equipment and buildings.

Section 10. **Assistance to the Board**. The Director shall assist the Board in the performance of its duties, and shall prepare reports as requested by the Board.

Section 11. **Annual Reports**. The Library Board shall make a full and complete annual report to the City Council and make such other reports as may be required by the Mayor and Council. The Community Services Director shall be responsible for the preparation of the report with Board input.

[Section 11 as amended by Ordinance 2412, passed November 13, 2006.]

Section 12. **Repeal.** Ordinance No. 1797 is hereby repealed.

Section 13. [Emergency clause.]

Passed by the Council June 12, 2000 and approved by the Mayor June 13, 2000.

ORDINANCE NO. 2270

AN ORDINANCE CREATING A RECREATION AND PARK BOARD, DEFINING ITS DUTIES AND RESPONSIBILITIES, REPEALING ORDINANCE 1796 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. The Woodburn Recreation and Park Board is hereby created to advise and make recommendations to the Community Services Director, and when appropriate, the Mayor and City Council, on all matters related to the development and management of parks, recreation facilities and a program of leisure and recreational services in the City of Woodburn, and to formulate and adopt rules and regulations governing the use of those facilities.

[Section 1 as amended by Ordinance 2412, passed November 13, 2006.]

Section 2. Board Membership. The Board shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and shall be responsible to the Mayor and City Council. Six (6) members shall be appointed from resident voters of the City or of the urban growth boundary. The seventh member shall be appointed from the student body of Woodburn High School and need not be a resident voter. Members shall possess a background and interest in library science and programs, library management and operations, or literacy. Members shall serve without pay. Terms of office, excepting that of the member appointed from the student body from Woodburn High School, shall be four (4) years from the date of appointment and staggered so three positions will expire every two years. The term of office for the member appointed from Woodburn High School shall be one (1) year from the date of appointment, which shall be in August. All other appointments shall be made annually, in December, or upon the expiration or other termination of the member's term of office. Each member of the Committee serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause or hearing. Members may be removed by the Mayor pursuant to City resolution. In addition to the appointed members, the Mayor or the Mayor's representative and the Director will serve as ex-officio members.

[Section 2 as amended by Ordinance 2412, passed November 13, 2006.]

Section 3. Meetings. The Board shall meet at such times as the Board may determine are appropriate and necessary. All Board meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

Section 4. Officers. The Recreation and Park Board shall, at its first annual meeting, elect a chairman, secretary and such other officers as the Board may deem appropriate. Officers shall have such duties and authority as the Board shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

Section 5. **Board Responsibilities.** The Recreation and Park Board shall have the responsibility for advising and making recommendations to the Community Services Director, and when appropriate, to the Mayor and Council, on all matters pertaining to the planning, acquisition, development and management of leisure services operated or owned by the City near or adjacent thereto.

[Section 5 as amended by Ordinance 2412, passed November 13, 2006.]

Section 6. **Budget.** The Recreation and Park Board shall participate in the preparation of the annual budget and shall recommend to the budget officer a budget for the expenditure of all funds produced by tax or other means for the development, promotion and management of parks, recreation facilities and leisure services in the City of Woodburn.

Section 7. **Rules and Regulations.** The Recreation and Park Board shall recommend to the Mayor and City Council reasonable rules and regulations governing the use and proper conduct of parks, recreation facilities and leisure services in the City of Woodburn.

Section 8. **Supervision of Director.** The City Administrator shall have the responsibility for the hiring, termination, discipline and any other personnel actions affecting the Community Services Director. The Board shall act in an advisory capacity in the selection, discipline, or termination of the Director.

[Section 8 as amended by Ordinance 2412, passed November 13, 2006.]

Section 9. **Internal Administrative Policies and Procedures.** The City Administrator shall be the fiscal and internal administrative agent for the Recreation and Park Department and the department shall operate in conformance with city administrative procedures including those pertaining to the following: (1) Personnel, including recruitment, selection, classification and pay for department staff; (2) Personnel matters, including discipline and grievances; (3) Receipt, disbursement, and accounting for monies; (4) Maintenance of general books, cost accounting records, and other financial documents; (5) Purchasing; (6) Budget administration; and (7) Operation and maintenance of equipment and buildings.

Section 10. **Assistance to the Board.** The Director shall assist the Board in the performance of its duties, and shall prepare reports as requested by the Board.

Section 11. **Annual Reports.** The Recreation and Park Board shall make a full and complete report to the City Council and make such other reports as may be required by the Mayor and Council. The Community Services Director shall be responsible for the preparation of the report with Board input.

[Section 11 as amended by Ordinance 2412, passed November 13, 2006.]

Section 12. **Repeal.** Ordinance No. 1796 is hereby repealed.

Section 13. [Emergency clause.]

Passed by the Council June 26, 2000 and approved by the Mayor June 28, 2000.

ORDINANCE NO. 2304

AN ORDINANCE RELATING TO REAPPORTIONMENT OF WARD BOUNDARIES, REPEALING ORDINANCE 2304, AND DECLARING AN EMERGENCY

[Whereas clauses.]

The City of Woodburn Ordains as Follows:

Section 1. That the City of Woodburn is hereby divided into six wards, which shall be designated as Wards I, II, III, IV, V, and VI.

Section 2. That the boundaries of the six wards created by section 1 above shall be as indicated on a map known as "Ward Map of 2011", a copy of which is attached hereto as Exhibit "A" and, by this reference, incorporated herein.

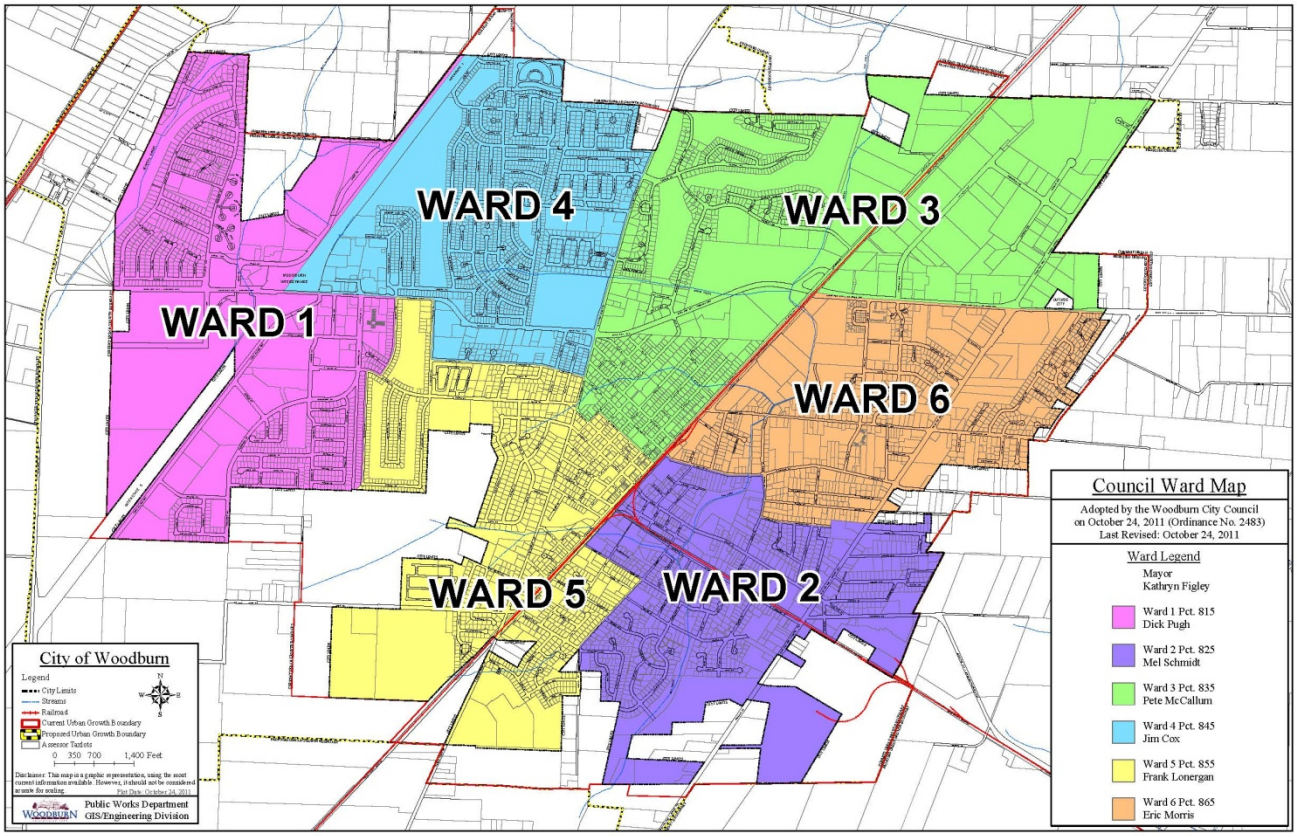
Section 3. That two (2) copies of said ward map are on file in the office of the City Recorder, and said map of boundaries indicated thereon are hereby adopted until such time as they shall be amended or abolished by ordinance or Charter.

Section 4. That Ordinance 2304 is repealed.

Section 5. That a copy of this ordinance and the attached Ward Map of 2011 be sent to the Elections Department of Marion County, Oregon.

Section 6. [Emergency clause.]

Passed by the Council October 24, 2011 and approved by the Mayor


WARD 1
WARD 2
WARD 3
WARD 4
WARD 5
WARD 6
Council Ward Map
Adopted by the Woodburn City Council
on October 24, 2011 (Ordinance No. 2483)
Last Revised: October 24, 2011
Ward Legend
Mayor
Kathryn Figley
Ward 1 Pct. 815
Dick Pugh
Ward 2 Pct. 825
Mel Schmidt
Ward 3 Pct. 835
Pete McCallum
Ward 4 Pct. 845
Jim Cox
Ward 5 Pct. 855
Frank Lonergan
Ward 6 Pct. 865
Eric Morris
City of Woodburn
Legend
City Limits
Streams
Railroad
Current Urban Growth Boundary
Proposed Urban Growth Boundary
Assessor Taxlots
0 350 700 1,400 Feet
N
W
E
S
Disclaimer: This map is a graphic representation, using the most current information available. However, it should not be considered accurate for scaling.
First Date: October 24, 2011
WOODBURN
Public Works Department
GIS/Engineering Division

ORDINANCE NO. 2284

AN ORDINANCE RELATING TO TELECOMMUNICATIONS WITHIN THE CITY; PROVIDING FOR THE MANAGEMENT OF PUBLIC RIGHTS OF WAY; AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose and intent of this Ordinance are to:

(1) Comply with the 1996 Telecommunications Act as it applies to local governments, telecommunications carriers and the services those carriers offer;

(2) Promote competition on a competitively neutral basis in the provision of telecommunications services;

(3) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the City's businesses and residents;

(4) Permit and manage reasonable access to the City's public rights-of-way 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;

(5) 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;

(6) Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right of way;

(7) Assure that all telecommunications carriers providing facilities or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;

(8) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;

(9) Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

Section 2. Definitions. As used in this Ordinance, the following definitions apply. Words not defined 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.

(1) "Aboveground Facilities" See Overhead Facilities.

(2) "Affiliated Interest" has the same meaning as ORS 759.010.

(3) "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as now and hereafter amended.

(4) "Cable service" is defined consistent with federal laws and 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.

(5) "City" means the City of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

(6) "City Administrator" means the City Administrator of the City of Woodburn.

(7) "City Engineer" means the City Engineer of the City of Woodburn.

(8) "City property" includes all real property owned by the City, other than public rights of way and utility easements as defined in this ordinance, and all property held in a proprietary capacity by the City that are not subject to right of way franchising under this Ordinance.

(9) "Control" or "controlling interest" means actual working control in whatever manner exercised.

(10) "Conduit" means any structure or portion of a structure containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for 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.

(11) "Construction" means an activity in the public rights of way resulting in physical change, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

(12) "Days" means calendar days unless otherwise specified.

(13) "Duct" means a single enclosed raceway for conductors or cable.

(14) "Emergency" has the meaning provided for in ORS 401.025.

(15) "Federal Communications Commission" or "FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

(16) "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.

(17) "Grantee" means the person to which a franchise is granted by the City.

(18) "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.

(19) "Overhead" or "Aboveground Facilities" means utility poles, utility facilities and telecommunications facilities on or above the surface of the ground, including the underground supports and foundations for such facilities.

(20) "Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

(21) "Private telecommunications network" means a system, including the construction, maintenance or operation of the system, for the provision of a service or portion of a service that is owned or operated exclusively by a person for his or her use 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.

(22) "Public rights of way" means a strip of land reserved for public uses such as roadways and sewer and water lines and includes, but is 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. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. “Public rights of way” also includes utility easements as defined below.

(23) "Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. 151 et seq.) and as hereafter amended.

(24) Telecommunications carrier means a provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City.

(25) "Telecommunications facilities" means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier.

(26) “Telecommunications Service” means any service provided for the purpose of the transmission of information, including, but not limited to voice, video or data, without regard to the transmission medium or protocol employed, and whether or not the transmission medium is owned by the provider itself. Telecommunication service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.”

(27) "Telecommunications system" see “Telecommunications facilities” above.

(28) "Telecommunications utility" has the same meaning as ORS 759.005(1).

(29) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

(30) "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.

(31) "Utility easement" means an easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

(32) "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.

(Section 2 amended by Ordinance 2482 passed October 10, 2011 and effective October 10, 2011)

Section 3. Jurisdiction and Management of the Public Rights of Way

(1) The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.

(2) 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.

(3) The City has jurisdiction and exercises regulatory management 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 management of 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.

(4) 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.

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

(6) 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 a public health or safety emergency.

Section 4. Regulatory Fees and Compensation Not a Tax.

(1) 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 all federal, state, local, and City charges 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.

(2) The City has determined that any fee provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

(3) The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. Purpose of Registration. The purpose of registration is:

(1) To assure that all telecommunications carriers who have facilities or provide services within the City comply with the ordinances, rules and regulations of the City.

(2) 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.

(3) 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.

Section 6. Registration Required.

(1) Except as provided in Section 7 of this ordinance, 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. The appropriate application and license from the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

(a) The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.

(b) The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.

(c) A description of the registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.

(d) 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 license requirements. A copy of the business license or the license number must be provided.

(2) 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

Section 7. Exceptions to Registration. The following telecommunications carriers are excepted from registration:

(1) Telecommunications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State.

(2) A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

Section 8. Construction Standards.

(1) 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 this Ordinance, and with all other applicable codes, ordinances, rules, and regulations.

(2) 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.

Section 9. 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 this Ordinance. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way unless:

(1) The telecommunications carrier has first filed a registration statement with the City pursuant to this Ordinance; and if applicable,

(2) The telecommunications carrier has first applied for and received a franchise pursuant to this Ordinance.

Section 10. Permit Applications.

(1) 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 aboveground or on existing utility poles.

(d) The location and route of all new facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the public rights of way. Applicant's existing facilities shall be differentiated on the plans from new construction.

(e) The location of all of applicant's 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, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

(g) Details of work area restoration including but limited to paving, compaction, landscaping.

(2) All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative

of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

(3) 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 City Engineer.

(4) City will review application and may make requests for elevation and horizontal location to eliminate planned existing conflicts with other underground lines.

Section 11. 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. Such fees shall be designed to defray the costs of city administration of the requirements of this ordinance.

Section 12. Issuance of Permit. If satisfied that the applications, plans and documents submitted comply with all requirements of this Ordinance and the franchise agreement, the City Engineer 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.

Section 13. Notice of Construction. Except in the case of an emergency, the permittee shall notify the Engineering and Building Department not less than two working days in advance of any excavation or construction in the public rights of way.

Section 14. 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 Engineering and Building Department and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

Section 15. Noncomplying Work. Subject to the notice requirements in Section 13, all work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with this Ordinance.

Section 16. Completion of Construction. The permittee shall comply with any time lines and special construction activity conditions placed on the construction permit and 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 extension or an alternate schedule has been approved by the City Engineer.

Section 17. As-Built Drawings. If requested by the City for a necessary public purpose, as determined by the City, the permittee shall furnish the City with up to two

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. These plans shall be submitted to the City Engineer or designee within 60 days after completion of construction, in a format mutually acceptable to the permittee and the City.

Section 18. Restoration of Public Rights of Way and City Property.

(1) When a permittee, or any person acting on its behalf, does any work in or affecting a public right of way or City property, it shall, at its own expense, promptly remove any obstructions and restore the ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.

(2) 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 at the permittee's sole expense. 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 may be subject to approval by the City.

(3) If the permittee fails to restore rights of way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 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.

(4) 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.

Section 19. Performance and Completion Bond. Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City 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 provided before construction is commenced.

(1) The surety shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City Engineer, including restoration of public rights of way and other property affected by the construction.

(2) The surety shall guarantee, to the satisfaction of the City:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the City;

(d) Restoration of the public rights of way and other property affected by the construction; and

(e) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(f) Maintenance for one year of trench areas, pavement, landscaping, and areas disrupted by the construction.

Section 20. 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:

(1) Whenever all 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.

(2) Whenever all 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 applicable state and federal law.

Section 21. Interference with 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 use of public rights of way shall be consistent with City codes, ordinances and regulations.

Section 22. Relocation or Removal of Facilities. Except in the case of an emergency, within 90 days following written notice from the City, a grantee shall, at no expense to Grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights of way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights of way.

(2) The operations of the City or other governmental entity in or upon the public rights of way.

(3) The public interest.

Section 23. Removal of Unauthorized Facilities. Within 30 days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains an unauthorized telecommunications system, facility, or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities and appurtenances from the public rights of way of the City. Both parties are required to participate in good faith negotiations on such issues. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) One year after the expiration or termination of the grantee's telecommunications franchise.

(2) 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 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. The City shall make a reasonable attempt to contact the telecommunications carrier before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if there is no apparent risk to the public safety, health, or welfare.

(3) If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.

(4) 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.

Section 24. Coordination of Construction Activities. All grantees are required to make a good faith effort to cooperate with the City.

(1) By January 1 of each year, grantees shall provide the City with a schedule of their known proposed construction activities in, around or that may affect the public rights of way.

(2) If requested by the City, each grantee shall meet with the City annually or as determined by the City, to schedule and coordinate construction in the public rights of way. At that time, City will provide available information on plans for local, state, and/or federal construction projects.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

Section 25. Telecommunications Franchise. A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the City.

Section 26. Application. Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:

(1) The identity of the applicant.

(2) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.

(3) Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities.

(4) 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.

(5) 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.

6) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

Section 27. Application and Review Fee.

(1) Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.

(2) An application and review fee of $2,000 shall be deposited with the City as part of the application filed pursuant to Section 26 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.

Section 28. Determination by the City. The City Council shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

Section 29. 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, and upon the conditions stated in the franchise agreement.

Section 30. Term of Grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of five years.

Section 31. Franchise Territory. Unless otherwise specified in a franchise agreement, a telecommunications franchise 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, and may include the entire city.

Section 32. 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. 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 and applicable state and federal laws.

Section 33. Amendment of Grant. Conditions for amending a franchise:

(1) 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 that are not included in a franchise previously granted under this Ordinance.

(2) 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.

(3) 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.

Section 34. Renewal Applications. A grantee that desires to renew its franchise under this Ordinance shall file an application with the City for renewal of its franchise, not less than 180 days before expiration of the current agreement, which shall include the following information:

(1) The information required under Section 26 of this Ordinance.

(2) Any information required pursuant to the franchise agreement between the City and the grantee.

Section 35. Renewal Determinations. Within 90 days after receiving a complete renewal application under Section 34, 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.

(1) The financial and technical ability of the applicant.

(2) The legal ability of the applicant.

(3) The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.

(4) The applicant's compliance with the requirements of this Ordinance and the franchise agreement.

(5) Applicable federal, state and local telecommunications laws, rules and policies.

(6) Such other factors as may demonstrate that the continued grant to use the public rights of way will serve the community interest.

Section 36. Obligation to Cure As a Condition of Renewal. No franchise shall be renewed until all ongoing violations or defaults in the grantee's performance of the agreement, or 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 Council.

Section 37. 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.

(1) Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

(2) 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.

(3) 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.

(4) A transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the City Council under this Section or under a franchise agreement shall be void and is cause for revocation of the franchise.

Section 38. 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:

(1) Construction or operation in the City or in the public rights of way of the City without a construction permit.

(2) Construction or operation at an unauthorized location.

(3) Failure to comply with Section 37 of this Ordinance with respect to sale, transfer or assignment of a telecommunications system or franchise.

(4) Misrepresentation by or on behalf of a grantee in any application to the City.

(5) Abandonment of telecommunications facilities in the public rights of way. As used in this ordinance, "abandonment" refers to facilities remaining in the right of way following the expiration of the franchise, or not otherwise used to provide services, for a period of one year.

(6) Failure to relocate or remove facilities as required in this Ordinance.

(7) Failure to pay taxes, compensation, fees or costs when and as due the City under this ordinance.

(8) Insolvency or bankruptcy of the grantee.

(9) Violation of material provisions of this Ordinance.

(10) Violation of the material terms of a franchise agreement.

Section 39. Notice and Duty to Cure. If 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 30 days, to furnish evidence that:

(1) Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) Rebuts the alleged violation or noncompliance; and/or

(3) It would be in the public interest to impose some penalty or sanction less than revocation.

Section 40. Public Hearing. If a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 39, the City Administrator may 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.

Section 41. 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. Whether:

(1) The misconduct was egregious.

(2) Substantial harm resulted.

(3) The violation was intentional.

(4) There is a history of prior violations of the same or other requirements.

(5) There is a history of overall compliance.

(6) The violation was voluntarily disclosed, admitted or cured.

Section 42. Other City Costs. All grantees shall, within 30 days after written demand, reimburse the City for all reasonable 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 consistent with applicable state and federal laws.

Section 43. Facilities. Upon request, 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. Grantees shall provide updated maps to the City semi-annually.

Section 44. Damage to Grantee's Facilities. Unless directly and proximately caused by negligent, careless, wrongful, willful, intentional or malicious acts by the City, and consistent with Oregon law, 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 from such acts.

Section 45. Duty to Provide Information. Except in emergencies, within 60 days of a written request from the City, each grantee shall furnish the City with the following:

(1) Information sufficient to demonstrate that grantee has complied with all requirements of this Ordinance.

(2) 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.

Section 46. 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 similar users 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.

Section 47. 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.

Section 48. Cable Franchise. Telecommunication carriers providing cable service shall be subject to the requirements for cable franchises.

Section 49. Leased Capacity. A grantee has the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; however, the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

Section 50. 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 coinsured:

(1) Comprehensive general liability insurance with limits not less than

(a) $3,000,000 for bodily injury or death to each person;

(b) $3,000,000 for property damage resulting from any one accident; and,

(c) $3,000,000 for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000.

(5) The grantee shall maintain liability insurance policies required by this Section throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise, 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 Woodburn City Attorney of such intent to cancel or not to renew."

(6) Within 60 days after receipt by the City of said notice, and in no event later than 30 days prior to cancellation, the grantee shall obtain and furnish evidence to the City that the grantee meets the requirements of this Section.

(7) As an alternative to the insurance requirements listed above, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

(8) Grantees shall either provide insurance coverage as described above for their contractors and subcontractors or require that the contractors and subcontractors provide evidence of such insurance coverage before beginning work in the public rights of way

Section 51. General Indemnification. To the extent permitted by law, each franchise agreement shall include 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.

Section 52. 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 surety required by Section 19 of this Ordinance for construction of facilities.

Section 53. Governing Law. A franchise granted under this Ordinance is subject to the Constitution and laws of the United States, the State of Oregon and the ordinances and Charter of the City.

Section 54. Written Agreement. No franchise shall be granted under this ordinance unless the agreement is in writing.

Section 55. 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.

Section 56. 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 a court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Ordinance shall not be affected but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions. 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. If 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 only to the extent required by law. If such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall be binding, without the requirement of further action on the part of the City.

Section 57. Penalty. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance. Each violation of this Ordinance constitutes a separate Civil Infraction, and each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

Section 58. 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.

Section 59. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections. Such captions shall not affect the meaning or interpretation of this Ordinance and constitute no part of the law.

Section 60. Compliance with Laws. A grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of its administrative agencies, as well as all ordinances, resolutions, rules and regulations of the City adopted or established during the entire term of a franchise granted under this Ordinance, that are relevant and relate to the construction, maintenance and operation of a telecommunications system.

Section 61. 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.

Section 62. 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.

Section 63. Confidentiality. The City shall preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

Section 64. [Emergency clause.]

Passed by the Council April 12, 2001, and approved by the Mayor April 13, 2001.

ORDINANCE NO. 2315

AN ORDINANCE ADOPTING PROCEDURES TO PREPARE FOR AND CARRY OUT ACTIVITIES TO PREVENT, MINIMIZE, RESPOND TO OR RECOVER FROM EMERGENCIES; PROVIDING A PROCESS FOR THE DECLARATION OF A STATE OF EMERGENCY; GRANTING THE AUTHORITY TO ORDER MANDATORY EVACUATIONS; PRESCRIBING A PENALTY; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. This ordinance shall be known as the Emergency Management Ordinance of the City of Woodburn.

Section 2. Purpose. The purpose of this ordinance is to provide procedures to minimize injuries to persons and property and to prepare for, respond to, and recover from any emergency within the incorporated area of the City of Woodburn. This ordinance is implemented by the City of Woodburn Emergency Management Plan. The authority to enact this ordinance is granted by the Woodburn Charter and ORS Chapter 401.

Section 3. Definition of Emergency. "Emergency" is defined pursuant to ORS 401.025(4) as "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, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war."

Section 4. Emergency Management Agency. Pursuant to ORS 401.305, an "Emergency Management Agency" for the City of Woodburn is hereby established as specified in the City of Woodburn Emergency Management Plan which is incorporated herein by reference. The functions of the Emergency Management Agency include, but are not limited to, program development, fiscal management, coordination with government and nongovernmental agencies and organizations, public information, personnel training and development and implementation of exercises to test the system.

Section 5. Emergency Management Plan. The procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from emergencies within the City of Woodburn are set out in the City of Woodburn Emergency Management Plan which is incorporated herein by reference.

Section 6. Emergency Program Manager. The City Administrator shall appoint an Emergency Program Manager who shall be responsible for the organization, administration, and operation of the agency and coordination of emergency activities

with county, state, and other governments and private organizations, subject to the direction and control of the City Council and City Administrator.

Section 7. **Declaration of State of Emergency**. The authority to declare a state of emergency is delegated to the City Administrator. If the City Administrator is unable to act due to absence or incapacity, the Emergency Program Manager is delegated authority. If in the judgment of the Incident Commander, time does not permit access to the others authorized, the Incident Commander may declare a state of emergency. The City Council shall convene as soon as practical to ratify the state of emergency declaration. The declaration must include a description of the situation, existing conditions, and must delineate the geographic boundaries involved.

Section 8. **Conditions Required to Declare a State of Emergency**. A state of emergency may be declared whenever an event or circumstance exists within the City of Woodburn that meets the definition of an emergency and requires a response under the City of Woodburn Emergency Management Plan.

Section 9. **Authority to Order Mandatory Evacuations**. After a state of emergency has been declared, the City Administrator or Incident Commander may order mandatory evacuations of residents and other individuals pursuant to the City of Woodburn Emergency Management Plan if necessary for public safety or the efficient conduct of activities that minimize or mitigate the effects of the emergency.

Section 10. **Penalty**.

A. Any person, firm, corporation, association or entity who violates any emergency measure taken under the authority of this ordinance shall be subject, upon conviction, to a fine of not more than $500 per offense.

B. Each day of violation shall be deemed a separate offense for purposes of imposition of penalty.

C. The penalty provisions contained in this ordinance are in addition to and not in lieu of any other procedures and remedies provided to the city by law, including equitable relief and damages.

Section 11. **Severability**. If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 12. [Emergency clause.]

Passed by the Council May 13, 2002 and approved by the Mayor May 14, 2002.

THE FULL TEXT OF THE EMERGENCY MANAGEMENT PLAN IS ON FILE FOR REFERENCE IN THE OFFICE OF THE CITY RECORDER.

ORDINANCE NO. 2381

AN ORDINANCE ADOPTING RULES FOR PUBLIC CONTRACTING; ESTABLISHING CERTAIN CONTRACT CLASS EXEMPTIONS; PROVIDING PROCEDURES FOR PERSONAL SERVICE CONTRACTS; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. "Formal competitive selection procedures" means procedures for public contracting as required by ORS 279B.050(1) (competitive sealed bids or competitive sealed proposals for goods and services), or ORS 279C.335(1) (competitive bids for public improvements) or, for personal service contracts, the same formal procedures required for the selection of goods and services pursuant to ORS 279B.060 (competitive sealed proposals).

B. "Formal competitive selection process" means the process of using formal competitive selection procedures for the procurement of goods and services or for public improvements contracts.

C. "Personal service contracts" include contracts for services that require specialized technical, artistic, creative, professional or communication skills or talent, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the service depends on attributes that are unique to the service provider, other than contracts for an architect, engineer, land surveyor or provider of related services as defined in ORS 279C.100.

Section 2. Local Contract Review Board. The City Council of the City of Woodburn is designated as the Local Contract Review Board under the Oregon Public Contracting Code. The Local Contract Review Board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, and the Woodburn City Charter and ordinances.

Section 3. Contracting Agency. The City Administrator or his/her designee is designated as the City's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Woodburn as a "Contracting Agency."

Section 4. Model Rules. Except as modified herein, or by subsequent ordinance or resolution, the Model Rules, Divisions 46, 47, 48 and 49, adopted by the Attorney General under ORS 279A, 279B, and 279C, as they now exist, and as they may be amended in the future, are hereby adopted as the City's public contracting rules. Words and phrases used by these rules that are defined in ORS subchapters 279A, 279B, and 279C and in the Model Rules, have the same meaning as defined in ORS subchapters 279A, 279B, and 279C and the Model Rules.

Section 5. Public Contracting Authority. Administrative staff and departments have contracting authority and responsibilities as follows:

A. The City Administrator is authorized to:

1. Enter into city contracts not to exceed $75,000 without additional authorization of the Local Contract Review Board. Contracts exceeding $75,000 for public improvements, identified in a Capital Improvement Plan, that have been approved by the City Council through the budgetary process, shall be deemed to be approved by the Local Contract Review Board.

2. Recommend that the Local Contract Review Board approve or disapprove contract awards in excess of $75,000, or to change orders or amendments to contracts of more than $75,000.

3. Adopt forms, computer software, procedures, and administrative policies for all City purchases consistent with the Woodburn City Charter and ordinances.

B. All contracting by departments shall conform to approved City purchasing procedures adopted by the City Administrator or the Local Contract Review Board.

C. Each department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.

D. The City Administrator shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws (including the Oregon Public Contracting Code), policies and procedures.

Section 6. Formal Competitive Selection Procedures-Exemptions. All public contracts shall be based upon formal competitive selection requirements of ORS 279B.050(1) or ORS 279C.335(1), except as expressly provided in this subsection, or by subsequent ordinance or resolution. The following classes of public contracts are hereby exempted from the formal competitive selection requirements of ORS 279B.050(1) and ORS 279C.335(1):

A. Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;

B. Any contract expressly exempted from formal competitive selection procedures adopted by ordinance or resolution of the Local Contract Review Board pursuant to ORS 279B.085;

C. Purchases through federal programs pursuant to ORS 279A.180;

D. In the event of an emergency involving an immediate hazard to the public health, safety, or welfare, the City Administrator, Finance Director, Public Works Director, or Chief of Police may secure necessary goods and/or services without a formal competitive selection process, provided that the Local Contract Review Board, at a regularly scheduled meeting within 30 days of the procurement, is furnished with a full report of the circumstances and costs of the materials and/or services secured;

E. Contracts for goods or services, or a class of goods or services, which are available from only one source. To the extent reasonably practical, the City Administrator shall negotiate with the sole source to obtain contract terms advantageous to the City. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed $5,000, but do not exceed $75,000, must be approved by the City Administrator. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed $75,000 must be approved by the Local Contract Review Board. The determination of a sole source must be based on written findings that may include:

1. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;

2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

3. That the goods or services are for use in a pilot or experimental project;

4. Other findings that support the conclusion that the goods or services are available from only one source; or

5. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed $5,000, but do not exceed $75,000, must be approved by the City Administrator. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed $75,000 must be approved by the Local Contract Review Board;

F. Contracts for products, services or supplies if the value of the contract does not exceed $5,000. Any procurement of goods or services not exceeding $5,000 per item may be awarded in any manner deemed practical or convenient by the City Administrator, including by direct selection or award. A contract awarded under this section may be amended to exceed $5,000 only upon approval of the City Administrator and in no case may exceed $6,000. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this selection;

G. Contracts for the purchase of copyrighted materials where there is only one supplier available within a reasonable purchase area for such goods;

H. Contracts for the purchase of advertising, including that intended for the purpose of giving public or legal notice;

I. Contracts for the procurement of banking services;

J. Contracts for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment if required for efficient utilization of such equipment;

K. Contracts for the purpose of investment of public funds or the borrowing of funds;

L. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulating authority;

M. Contracts not to exceed $75,000 for the purchase of goods, materials, supplies and services. For contracts for the purchase of goods, materials, supplies and services that are more than $5,000, but that do not exceed $75,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

N. Contracts not to exceed $75,000 for public improvements, including contracts for services of architects, engineers, land surveyors and related services, (other than contracts for a highway, bridge or other transportation projects), if the following conditions are met:

1. The contract is for a single project and is not a component of or related to any other project;

2. When the amount of the public improvement contract (other than contracts for a highway, bridge or other transportation projects) is more than $5,000, but does not exceed $75,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

3. The City Administrator shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity and contractor responsibility. If the contract is not awarded on basis of lowest price, the City Administrator shall make a written finding of the basis for the award;

O. Contracts for a highway, bridge or other transportation projects more than $5,000, but not to exceed $50,000, if the following conditions are complied with:

1. The contract is for a single project and is not a component of or related to any other project;

2. When the amount of the contract for a highway, bridge or other transportation projects is more than $5,000, but does not exceed $50,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

3. The City Administrator shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity and contractor responsibility. If the contract is not awarded on basis of lowest price, the City Administrator shall make a written finding of the basis for the award.

Section 7. Notice of Public Contracts. Notice of public improvement contracts or contracts for the purchase of goods or services may be published electronically where the City Administrator finds that such publication is likely to be cost effective as provided in ORS 279C.360.

Section 8. Disposal of Surplus and Abandoned Property. The City Administrator shall have the authority to dispose of surplus property and abandoned personal property not owned by the City by any means determined to be in the best interests of the City, including but not limited to, transfer to other departments, government agencies, non-profit organizations, sale, trade, auction, or destruction; provided however, that disposal of personal property having residual value of more than $10,000 shall be subject to authorization by the Local Contract Review Board.

Section 9. Personal Service Contracts. Personal service contracts shall be used to retain the services of independent contractors (other than contracts for an architect, engineer, land surveyor or provider of related services as defined in ORS 279C.100). Nothing in this section shall apply to the employment of regular city employees.

Section 10. Procedures for Personal Services Contracts. Personal service contracts are subject to the rules established by this section:

A. Unless otherwise approved by the City Administrator, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.

B. Unless otherwise approved by the City Administrator, personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

C. All personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference unless otherwise provided by law.

D. The formal competitive selection procedures described in this section may be waived by the City Administrator when an emergency exists that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the formal competitive selection procedures.

E. Personal service contract proposals may be modified or withdrawn at any time prior to the conclusion of discussions with an offeror.

F. For personal service contracts that are anticipated to cost $5,000 or less, such contracts must be memorialized by a formal purchase order.

G. For personal service contracts that are anticipated to exceed $5,000, but not exceed $75,000, at least three competitive written quotes from prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, shall be solicited. Each solicited contractor shall be notified in reasonable detail of the proposed assignment. Any or all interested prospective contractors may be interviewed for the assignment by an appropriate City employee or by an interview committee.

H. For personal service contracts that are anticipated to cost in excess of $75,000, the department head for the department that needs the services shall make the following determinations:

1. That the services to be acquired are personal services;

2. That a reasonable inquiry has been conducted as to the availability of City personnel to perform the services, and that the City does not have the personnel nor resources to perform the services required under the proposed contract; and

3. That the department has developed, and fully plans to implement, a written plan for utilizing such services, which will be included in the contractual statement of work.

I. All personal service contracts exceeding $75,000 shall be based upon formal competitive selection procedures, except as expressly provided in this subsection, or by subsequent ordinance or resolution. For personal service contracts that are anticipated to cost in excess of $75,000 per year, the department head for the department that needs the services shall follow the formal competitive selection procedures for formal competitive sealed proposals as found in the Model Rules, OAR 137-047-0260.

Section 11. Personal Services Contracts – Exemptions from Formal Competitive Selection Procedures. Contracts for personal services are exempt from formal competitive selection procedures if any of the following conditions exist:

A. The contract amount is anticipated to be $75,000 or less.

B. Contract amendments, which in the aggregate change the original contract price or alters the work to be performed, may be made with the contractor if such change or alternation is less than twenty-percent (25%) of the initial contract, and are subject to the following conditions:

1. The original contract imposes binding obligation on the parties covering the terms and conditions regarding changes in the work; or

2. The amended contract does not substantially alter the scope or nature of the project.

C. The City Administrator finds that there is only one person or entity within a reasonable area that can provide services of the type and quality required.

D. The contract for services is subject to selection procedures established by the State or Federal government.

E. The contract is for non-routine or non-repetitive type legal services provided by attorneys outside of the City Attorney's Office.

Section 12. Personal Services Contracts-Screening Criteria. The following criteria shall be considered in the evaluation and selection of a personal service contractor for personal service contracts:

A. Specialized experience in the type of work to be performed.

B. Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

C. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

D. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of designing or techniques peculiar to it, where applicable.

E. Cost of the services.

F. Any other factors relevant to the particular contract.

Section 13. **Personal Services Contracts-Selection Process.** The following rules shall be followed in selecting a contractor for personal services:

A. Personal service contracts less than $5,000 may be awarded in any manner deemed practical including by direct selection or award by the City Administrator (or any person with purchasing authority). A personal service contact awarded under this section may be amended to exceed $5,000 only upon approval of the City Administrator any in no case may exceed $6,000. A personal service contract may not be artificially divided or fragmented.

B. For personal service contracts that exceed $5,000, but do not exceed $75,000, the department head for the department that needs the services shall award the contract to the offeror whose quote or proposal will best serve the interests of the City, taking into account the relevant criteria found in this ordinance. The Department Head shall make written findings justifying the basis for the award.

C For personal service contracts that will cost $75,000 or more, the City Administrator shall award the contract based upon the formal competitive selection processes found in the Model Rules. The City Administrator shall make written findings justifying the basis of the award.

D. The City official conducting the selection of a personal service contact shall negotiate a contract with the best qualified offeror for the required services at a compensation determined in writing to be fair and reasonable.

Section 14. [Emergency clause.]

Passed by the Council February 28, 2005 and approved by the Mayor March 2, 2005.

ORDINANCE NO. 2428

AN ORDINANCE DELEGATING TO THE MUNICIPAL JUDGE THE AUTHORITY TO APPOINT MUNICIPAL JUDGES PRO TEM SUBJECT TO THE PROCESS PROVIDED IN THIS ORDINANCE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Consistent with the Charter and pursuant to this Ordinance, one or more Municipal Judges pro tem may be appointed to serve when the Municipal Judge is ill, disqualified or otherwise unavailable. Municipal Judges pro tem, when acting in that capacity, shall have all the duties and powers of the Municipal Judge.

Section 2. Municipal Judges pro tem shall be members in good standing of the Oregon State Bar.

Section 3. Municipal Judges pro tem may be appointed by the Municipal Judge, subject to the authority vested in the Council under the Charter to hire and terminate judges of the Municipal Court and the discretion of the Council to amend or repeal the procedures provided in this Ordinance. The Municipal Judge may terminate any appointment to the position of Municipal Judge pro tem, with or without cause. The Municipal Judge shall within 30 days advise the Council of all appointments, resignations and terminations of Municipal Judges pro tem. The Council retains its authority to disapprove or terminate the appointment on a Municipal Judge pro tem, with or without cause, but until the Council so acts, a Municipal Judge pro tem shall have the power to serve after taking the oath of office prescribed in Section 28 of the Charter.

Section 4. Assignment of a Municipal Judge pro tem to serve in particular matters or cases shall be made by the Municipal Judge. If the Municipal Judge does not make an assignment, it may be made administratively by the clerk of the Municipal Court in accordance with directions or procedures previously established by the Municipal Judge.

Section 5. The City Council may by resolution establish the rate of any compensation to be paid to Municipal Judges pro tem for services performed in that capacity.

Section 6. Any action, decision or judgment made or taken by a Municipal Judge pro tem prior to the effective date of this Ordinance is in all respects ratified and confirmed, and shall remain effective and binding, whether or not the Municipal Judge pro tem was appointed in accordance with the standards set forth in this Ordinance.

Passed by the Council January 14, 2008 and approved by the Mayor January 16, 2008.

ORDINANCE NO. 2433

AN ORDINANCE REPEALING ORDINANCE 2368 (THE 2004-05 MASTER FEE SCHEDULE); ADOPTING THE 2007-08 REVISED SCHEDULE OF FEES AND CHARGES FOR CITY SERVICES; PROVIDING FOR THE ANNUAL REVIEW OF SAID FEE SCHEDULE; AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Repeal. The 2004-05 Master Fee Schedule adopted on August 9, 2004 as Ordinance 2368 is hereby repealed. All fees and charges which are inconsistent with this Ordinance are hereby repealed.

Section 2. Fee Schedule Adoption. The City hereby adopts the 2007-08 Master Fee Schedule affixed hereto as Attachment "A" listing applicable fees and charges which shall be charged and collected for those services enumerated.

Section 3. Separate Fee For Additional Process. All fees set by this Ordinance are for each identified process; additional fees shall be required for each additional process or service that is requested or required. Where fees are indicated on a per unit of measurement basis, the fee is for each identified unit or portion thereof within the indicated ranges of such units.

Section 4. Review. It is the intention of the City Council to review the fees and charges adopted by this Ordinance on an annual basis based on the City's next annual budget and all the City's costs reasonably borne as established at the time and, if warranted, to revise such fees and charges based thereon.

Passed by the Council March 10, 2008 and approved by the Mayor March 26, 2008.

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Development -- Planning		
Annexation		
Annexation - more than 1.00 acre	$3,418	
Anexation - less than or equal to 1.00 acre	$2,659	
Appeals		
Appeal-Land Use Action to Council (Type III)	$0	$100 + 1/2 original application fee but not more than $2,000.
Appeal-Land Use Action to Council (Type II)	$250	limited by state statute (ORS 227.175(10)(b)).
Comprehensive Plan Amendments		
more than 1.00 acre	$3,481	
less than or equal to 1.00 acre	$3,133	
Conditional Use	$3,591	
Design Review		
–under 1,000 sq. ft.	$2,177	
–1,000-4,999 sq. ft.	$3,624	
–5,000 to 24,99 sq. ft.	$6,326	
–25,000 to 99,999 sq. ft.	$7,269	
–100,000 to 199,999 sq. ft.	$10,279	
–200,000 + sq. ft.	$14,397	
Exception to Street ROW and Improve (Type III)	$2,363	
Formal Interpretation of the WDO (5.104.03)	$1,759	
Formal Pre-Application Conference	$508	$100 of application fee reduced if application subject to pre-application applied for within 90 days and Ordinances have not changed.
Interpretation of Uses	$615	plus Measure 56 notice costs, if applicable
Interpretation of Zoning District Boundaries	$1,578	plus Measure 56 notice costs, if applicable
Manufactured Dwelling Park		
–Preliminary Approval	$3,137	
–Final Plan Approval	$1,081	
Partition		
–Preliminary Approval	$2,478	
–Final Plat Approval	$1,238	
Phasing Plan	$1,428	

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Development--continued		
Planned Unit Development		
–Preliminary Plan Approval	$2,985	plus $40 per lot
–Final Plat Approval	$2,585	
Property Line Adjustments	$599	
Resident Architectural Stds Substitution	$358	
Repair Corridr/Wetlds Over Dist (RCWOD)	$446	
Sign Ordinance Compliance Permit		
–Type I	$85	
–Type II	$385	
Spec Condintl Use for a Historically Significt Site	$1,148	
Subdivision		
–Preliminary Approval	$3,775	plus $40 per lot
–Final Plat Approval	$2,585	
Telecom Facility Specific Conditional Use	$2,188	
Temp Outdoor Mkt and Spec Event Permit	$157	
Significant Tree Removal Permit	$145	
Variance	$2,432	
Zone Map Amend	$3,074	
Zoning Adjustment	$1,042	
New Fees		
Access Permit to public ROW	$29	
Addressing	$145	for first lot, plus $3 for each subsequent lot
Exception to Street standard (Type II)	$1,197	New de-regulation, previously Type III at $1,627

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Development--continued		
Expedited Land Use Review-Partition	$4,680	(statutory) [ORS 197.360]
Expedited Land Use Review-Subdivision	$6,708	statutory
Expedited Review	$65	subject to staff availability and as allowed by law for use. In additon to application fees.
Renewal Authorization	$75	
3rd and successive Final Re-Inspection	$165	

3rd and successive Submittal Review	$265	
Tree Credit	$185	Per tree in lieu of significant tree replacement
Land Use Compatibility Statements		
Fence Permit		
Temporary Sign Permit		
Business Registration Review		
Modification of Condition	Original fee	$100 plus 1/2 of original fee
Grading Permit		Coordinate with Public Works Department as primary review body.
Planning counter and phone inquiry service		

(As amended by Ordinance 2443 passed June 25, 2008)

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Services -- Aquatic Center		
General Admission		
–infant (0-2 years)	$0.00	
–youth (3-17)	$4.00	
–adult (18-59)	$5.00	
–honored citizens (60+)	$4.00	
–family	$17.00	includes up to 2 adults & 3 kids
Group Admissions (10+ people)		
–admission with party room rental (each)	$2.75	10 or more people
–admission when booked in advance (each)	$3.25	10 or more people
–admission not booked in advance (each)	$3.50	10 or more people
Punch Cards (20 visits)		
–youth (3-17)	$67.00	Punch cards Expire after one year
–adult (18-59)	$88.00	
–honored citizens (60+)	$67.00	
3-Month Pass		
–youth (3-17)	$84.00	
–adult (18-59)	$114.00	
–honored citizens (60+)	$84.00	
–family	$208.00	
–joint pass with Everybody Fitness	$180.00	
–joint pass with Everybody Fitness - honored	$160.00	

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Services-- Aquatic Center continued		
Reoccurring Monthly Pass (electronic funds transfer)		
–youth (3-17)	$29.00	
–adult (18-59)	$39.00	
–honored citizens (60+)	$29.00	
–family	$69.00	
Group Memberships (generally corporate)		
–10+ individuals	$22.00	per month per member
–25+ individuals	$20.00	per month per member
–50+ individuals	$18.00	per month per member
Rentals		
–lane rental (per hour)	$20.00	
–private after hours (per hour)	$150.00	up to 25 people ($1.00 each add'l)
–party room (per hour)	$35.00	
–lane rental (per hour) - members	$15.00	discount for pass holders
–private after hours (per hour) - members	$140.00	discount for pass holders
–party room (per hour) - members	$30.00	discount for pass holders
Lessons, Training, Swim Instruction		
–group swimming lessons	$45.00	10 class session
–private swimming lessons	$160.00	10 lessons
–semi-private swimming lessons	$80.00	10 lessons with 2-3 students
–group swimming lessons (members)	$40.00	10 lessons
–private swimming lessons (members)	$140.00	10 lessons
–semi-private swimming lessons (members)	$70.00	10 lessons with 2-3 students
–lifeguard training	$0.00	
–swim instructor training	$0.00	
–jr. lifeguard training	$40.00	
–aquatics day camp	$35.00	
Other		
–locker rental (day use)	$1.00	
–monthly locker rental	$15.00	
–monthly locker rental (members)	$10.00	
(Aquatic fees as amended by Ordinance 2533)		

Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Services--Parks		
Park and Athletic Field Rentals Private (as amended by Ordinance 2525)		
Field Prep Soccer, Softball, Baseball	$40	per game
Any Entire Park	$400	per day

Athletic Field Lighting	$15	per hour
Burlingham Park Picnic	$20	fee is per hour - 2 hour minimum
Centennial Park Picnic	$25	fee is per hour - 2 hour minimum
Centennial Park Ball Field	$25	per hour
Centennial Park Youth Soccer Field	$25	per hour
Centennial Park Adult Soccer Field	$25	per hour
Legion Park Picnic	$30	fee is per hour - 2 hour minimum
Legion Park Adult Soccer Field	$25	per hour
Settlemier Park Picnic	$25	fee is per hour - 2 hour minimum
Settlemier Park Ball Field	$25	per hour
Downtown Plaza	$400	Per day
Downtown Plaza Gazebo	$25	fee is per hour - 2 hour minimum
Special Event Permit	$1,500	
Special Event Permit Add'l Days	$800	
Park and Athletic Field Rentals Commercial (as amended by Ordinance 2525)		
Field Prep Soccer, Softball, Baseball	$60	per game
Any Entire Park	$600	per day
Athletic Field Lighting	$22.50	per hour
Burlingham Park Picnic	$30	fee is per hour - 2 hour minimum
Centennial Park Picnic	$37.50	fee is per hour - 2 hour minimum
Centennial Park Ball Field	$52.50	per hour
Centennial Park Youth Soccer Field	$52.50	per hour
Centennial Park Adult Soccer Field	$52.50	per hour
Legion Park Picnic	$45	fee is per hour - 2 hour minimum
Legion Park Adult Soccer Field	$52.50	per hour
Settlemier Park Picnic	$37.50	fee is per hour - 2 hour minimum
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Services--Parks		
Settlemier Park Ball Field	$52.50	per hour
Downtown Plaza	$600	per day
Downtown Plaza Gazebo	$37.50	fee is per hour - 2 hour minimum
Special Event Permit	$2,250	
Special Event Permit Add'l Days	$1,200	
Recreation Programs		
Adult Basketball	$550	per team. $50 early registration discount
Adult Soccer	$450	per team. $50 early registration discount
Adult Drop-In Sports Class	$3	

Adult Trips	n/a	varies, depending on distance of trip, this fee only covers transportation costs. Individuals are responsible for admission to events, etc.
After School Club	$100	per term dependent upon agreement w/WSD
Senior Trips	n/a	varies, depending on distance of trip, this fee only covers transportation costs. Individuals are responsible for admission to events, etc.
Teen Programs	n/a	depended on grant funding
Youth Basketball	$55	$10 early registration discount
Youth Soccer	$55	$10 early registration discount
Youth T-Ball	$55	$10 early registration discount
Pee Wee sports	$40	$10 early registration discount
Summer Day Camp		
–per week	$75	
–all 9 weeks	$575	
Walt's Run		
–Individual	$15	Sponsor support $500 sponsorship
–Family (5 people max)	$50	Sponsor support $500 sponsorship
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Community Services--Library		
Fee for Interlibrary Loans	Postage	As required
Fines for Overdue Library Materials	$0.25	per day $.25/day, max of $5.00 per item
Key Ring Cards	None	
Replacement Library Cards	$1.00	per card after first replacement
Lost Books and Materials	list price	
Non-Resident Borrowing Card		
--Inside CCRLS	$60	Per year
--Outside CCRLS	$75	Per year
Printing	$0.10	per impression
Color Printing	$1.00	per impression
Conference Room	$14	per hour during business hours (only for groups charging admission)
Room Use Monitor Fee	$40	per hour for room use after business hours in addition to room use fee (only for groups charging admission)
Use of Carnegie Room	$16	per hour, during business hours, only for groups charging admission
Use of Multi-Purpose room	$20	per hour, during business hours, only for groups charging admission
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Finance		
Copy Fees (documents	$0.05	fee charged per page side (plus a research

including fax & e-mail)		fee of $41/ hour, charged to the nearest 1/4 hour only for complex duplicative requests requiring over 1/4 hour research). additional charges may be added for postage and handling, if necessary.
Copy Fees (tapes)	$3	fee charged per tape (plus a research fee of $41/ hour, charged to the nearest 1/4 hour only for complex duplicative requests requiring over 1/4 hour research). additional charges may be added for postage and handling, if necessary.
Copy of the Budget	$0	budget provided for free to public
Liquor License		
--new (all types)	$244	plus noticing costs in the event of a denial
--change in ownership/location/privilege	$75	plus noticing costs in the event of a denial
--renewal (all types)	$136	plus noticing costs in the event of a denial
--temporary/special event liquor license	$35	plus noticing costs in the event of a denial
Lien Filing	$34	
Lien Search Fees	$25	
NSF Check (Avoidance)	$10	payment to avoid water shut-off (in addition to check fee)
NSF Check (1st and 2nd)	$25	
NSF Check (3rd)	$30	
Public Dance Permit	$143	
Solicitors' License		
--new	$102	
--renewal	$45	
Sound Amplification Permit	$33	
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Police		
Archived Records Retrieval	$19	
Computer Records Scan	$19	
Fingerprinting (for SD)	$29	fee charged per person
Investigation for private parties	$87	
Nuisance Abatement		
–first hour	$159	
–each add'l hour or fraction	contractor costs	
Administrative Fee	10% of the total actual cost	Fee shall be a minimum of $75 and shall not exceed $1,000.
Processing Compact Disk Prints	$58	
Processing Photo Prints	$14	

Tow Uninsured Vehicle	$150	
Police/Traffic Accident Report	$23	
Vegetation Abatement		
–first hour	$120	
–each add'l hour or fraction thereof	$58	
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Public Works		
Construction Permit for Work in the ROW		
–under $5,000	n/a	limited by statute, 5% of cost but not less than $10
–$5,000 - $25,000	n/a	limited by statute, plus 4% over $5,000
–$25,000 - $100,000	n/a	limited by statute, plus 3% over $25,000
–over $100,000	n/a	limited by statute, plus 2% over $100,000
Weep Holes--First	$67	
Weep Holes--Each Additional	$34	
Sewer Tap	$202	
Water Service Installation Charges		
–1" line and 5/8" meter	$284	
–1" line and meter	$284	
–1-1/2" line and meter	$1,134	
–2" line and meter	$1,134	
–3" and larger line and meter	n/a	costs based on actual cost of installation for labor and materials, plus 15% of said cost for administrative and overhead expense
Utility Late Fees		
Delinquent balance-first notice	$10	
Delinquent balance-second notic	$10	
Restore disconncected service	$25	
Turn off/onn	$35	for reasons other than non-payment (excludes emergency such as waterline or equipment breakage)
Curb Cuts	$134	fee for two cuts
Approaches	$2	fee charged per foot
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Public Works--continued		
T & E	$1	fee charged per $1,000 valuation on building permit
Charge for Leak Adjustment	$49	deducted from total credit of leak

Service		adjustment [Ordinance 1866]
Charge for Lock Removal/Meter Damage	n/a	charges are based on actual cost of replacement locks/meters ctu or damaged by users, and labor cost for staff to replace items
B&W Copies--24" x 36" (full sheet)	$12	
B & W Copies--18" x 24" (half sheet)	$12	
24" x 36" (Aerials, Ward Maps, 1"=800' City Maps, Plotted)	$25	
Monthly Water Service Related Charges		
Deposit Application for 5/8" lines (Resident} [Ord 1965]	$75	
Other Deposit Amount		
–1"	$90	
–1-1/2"	$125	
–2"	$150	
–3"	$170	
–4"	$275	
–6"	$540	
–8"	$600	
Bulk Water Rate	$30	
***Meter Error* (when customer requests the city to test the meter serving individual's premises [Ordinance 1866]**		
–5/8"-3/4"	$35	
Regulation, Product or Service	Fee	Notes (Add'l Fees, Equipment, Etc.)
Public Works--continued		
Meter Error--continued		
–1"	$71	
–1-1/2"	$71	
–2"	$106	
–3"	$106	
–4"	$142	
–6"	$177	
–8"	$213	
Outside City Surcharge for Water Charges [Ord 1965]	n/a	
Hardship Relief [Ordinance 1965]	n/a	
Hydrant Relocation	n/a	
Street Vacation Request	$572	

City of Woodburn, Building Division

Commercial, Industrial, Public, and Multi-Family Permit and Plan Review Fees

(All Permits Except One- and Two-Family Building and Mechanical Permits)
Effective August 11, 2011

Service	Fee	Notes (Additional Fees, Units, etc.)
Building and Mechanical Permit Valuations (includes fire suppression and fire alarm permits):		
$1.00 to $2000.00	$97.50	minimum permit fee.
$2001.00 to $25,000.00	$97.50	for the first $2,000, plus $11.10 for each additional $1,000.00 or fraction thereof, to and including $25,000.
$25,001.00 to $50,000.00	$352.50	for the first $25,000, plus $9.30 for each additional $1,000.00 or fraction thereof, to and including $50,000.
$50,001.00 to $100,000.00	$585.00	for the first $50,000, plus $6.00 for each additional $1,000.00 or fraction thereof, to and including $100,000.
$100,001.00 and up	$885.00	for the first $100,000, plus $5.50 for each additional $1,000.00 or fraction thereof.
Note 1: The mechanical valuation includes the cost of all equipment and installation costs. Note 2: The building valuation shall be the greater of the ICC Building Valuation Data Table current as of April 1 of each year or the valuation as provided by the applicant.		
Building and Mechanical Plan Review Fees (includes fire suppression and fire alarm permits):		
Plan Review (Building and Mechanical)	100%	of permit fee.
Plan Review (Fire- and Life-Safety)	65%	of building permit fee.
Additional Plan Review (required by changes, additions, or revisions to approved plans)	$100	minimum one hour, charged per hour.
Additional Plan Review (prior to permit approval, charged after the second plan review)	$100	minimum one hour, charged per hour.

(The fees listed above do not include the State of Oregon permit fee surcharge or the statewide code development, training, and monitoring fee for manufactured dwellings or the school district construction excise tax.)

City of Woodburn, Building Division
One- and Two-Family Building Permit and Plan Review Fees
Effective August 11, 2011

Service	Fee	Notes (Additional Fees, Units, etc.)
One- and Two-Family Dwelling Building Permit Valuations:		
$1.00 to $2000.00	$67.00	minimum permit fee.
$2001.00 to $25,000.00	$67.00	for the first $2,000, plus $7.62 for each additional $1,000.00 or fraction thereof, to and including $25,000.
$25,001.00 to $50,000.00	$242.00	for the first $25,000, plus $6.40 for each additional $1,000.00 or fraction thereof, to and including $50,000.
$50,001.00 to $100,000.00	$402.00	for the first $50,000, plus $4.12 for each additional $1,000.00 or fraction thereof, to and including $100,000.
$100,001.00 and up	$608.00	for the first $100,000, plus $3.55 for each additional $1,000.00 or fraction thereof.
Note 1: The building valuation for new construction and additions shall be based on the ICC Building Valuation Data Table current as of April 1 of each year.		
One- and Two-Family Dwelling Carport, Covered Porch, Patio, and Deck: The square footage of a carport, covered porch, patio, or deck shall be calculated separately at fifty (50) percent of the value of a private garage from the most current ICC Building Valuation Data table.		
One- and Two-Family Dwelling Addition, Alteration, and Repairs: Permit fees shall be calculated based on the fair market value as determined by the building official and then applying the valuation to the permit fee table.		
One- and Two-Family Dwelling Building Plan Review Fees:		
Plan Review (One- and Two-Family Dwelling)	85%	of building permit fee.
Additional Plan Review (required by changes, additions, or revisions to approved plans)	$100	minimum one hour, charged per hour.
Additional Plan Review (prior to permit approval, charged after the second plan review)	$100	minimum one hour, charged per hour.

(The fees listed above do not include the State of Oregon permit fee surcharge or the statewide code development, training, and monitoring fee for manufactured dwellings or the school district construction excise tax.)

City of Woodburn Building Division
One- and Two-Family Dwelling Mechanical Fees
(Includes Manufactured Homes)
Effective August 11, 2011

ITEM	Fee (per appliance/equipment)
Heating & Cooling (includes relocation)	
Gas Connections (unlimited number of connections)	**$25.00**
Furnace including ductwork & vent (forced air)	**$25.00**
Air Conditioner, Heat Pump, or Evaporative Cooler	**$25.00**
Unit Heater (suspended, recessed wall, floor mounted)	**$25.00**
Air Handling Unit	**$25.00**
Fireplace / Insert / Stove / Log Lighter / Decorative Fireplace	**$25.00**
Boiler (Gas Connection and Venting Only)	**$25.00**
Venting (includes relocation)	
Range Hood	**$25.00**
Bath Fan	**$25.00**
Clothes Dryer Exhaust	**$25.00**
Exhaust Fan	**$25.00**
Water Heater Venting	**$25.00**
Miscellaneous (includes relocation)	
Barbecue	**$25.00**
Other Equipment or Appliance not Listed above	**$25.00**
Minimum Permit Fee	**$90.00**

(The fees listed above do not include the State of Oregon permit fee surcharge or the statewide code development, training, and monitoring fee for manufactured dwellings or the school district construction excise tax.)

Specialty Program Fees:		
Deferred Submittals (Plan Review)	100%	of permit fee calculated using the value of the deferred portion of the project, with a minimum fee of $300.00. This fee is in addition to the building or mechanical permit fee. A separate fee is assessed for each deferred submittal of the project.
Phased Permits (Plan Review)	20%	of building permit fee calculated using the value of the entire project, plus $300.00 up to a maximum fee of $1,500.00. This fee is in addition to the permit fee. A separate fee is assessed for each phase of the project.
Master Plan Review Fee	100%	of building permit fee for first plan and 45% of building permit fee for each separate review of same construction plan.
Administrative Fee for Processing State of Oregon Master Plans or Plans Reviewed by a Third Party Plans Examiner	10%	of building permit fee with a minimum fee of $200.00
Expedited Plan Review	$150.00	charged per hour, in addition to the calculated plan review fee.
Inspection Fees:		
Inspections Outside Normal Hours	$150	charged per hour (minimum 2 hours).
Re-Inspections (for which no fee specifically indicated)	$100	charged per hour (minimum 1 hour).
Inspections (for which no fee specifically indicated)	$100	charged per hour (minimum 1 hour).
Other Fees:		
Investigation Fee	150%	of permit fee, fee is in addition to the permit fee with a minimum fee of $300.00.
Temporary Certificate of Occupancy	$300.00	Issued for 30 days, $100 for each 30 day reissue.
Change of Occupancy	$100.00	charged per hour, minimum fee of two hours.
Stand Alone Residential Sprinkler System Fees:		
Square Footage	**Fee**	
0 to 2,000 square feet	$450.00	
2,001 to 3,600 square feet	$600.00	
3,601 to 7,200 square feet	$750.00	
7,200 square feet and above	$900.00	

Manufactured Dwelling and Cabana Installation Permits:		
A single fee is charged for the set-up of manufactured homes. This single fee includes the concrete slab, runners, or foundations when they comply with the prescriptive requirements of the Oregon Manufactured Dwelling standard, electrical feeder and plumbing connections, and all cross-over connections.		
Decks, other accessory structures, and foundations that do not comply with the prescriptive requirements of the Oregon Manufactured Dwelling and Park Specialty Code, utility connections beyond 30 lineal feet, new electrical services or additional branch circuits, new plumbing, and other such items that fall under the building code require separate permits.		
Installation Permit	$370.00	
Earthquake- and wind-resistant bracing systems	$130.00	
Reinspections	$130.00	
Camp and Park Permits:		
The fees for each permit issued for the construction, addition, or alteration of a manufactured dwelling park, recreational vehicle park, or organizational camp developed shall be calculated using the valuation of the work and the most recently adopted commercial building permit valuation table.		
Plan Review	100%	of permit fee.
Excavation and Grading Permits:		
The fee for an excavation and grading permit shall be calculated using the valuation of the work and the most recently adopted commercial building permit valuation table.		
Plan Review	100%	of permit fee.
Demolition Permits:		
The fee for a demolition permit shall be calculated using the valuation of the work and the most recently adopted building permit valuation table.		
Plan Review	100%	of permit fee.
Residential Roof-Top Solar System Fees:		
	Fee	
Prescriptive system	$300.00	Flat fee, includes one inspection.
Engineered system		Building Permit Fee is based on the valuation using the residential building permit valuation table.
Building Permit Fee	100%	of permit fee calculated using the valuation of the project, with a minimum fee of $300.00.
Plan Review Fee	100%	of permit fee for plan review.

(The fees listed above do not include the State of Oregon permit fee surcharge or the statewide code development, training, and monitoring fee for manufactured dwellings or the school district construction excise tax.)

ORDINANCE NO. 2491

AN ORDINANCE ESTABLISHING A PUBLIC ART MURAL PROGRAM; CREATING THE WOODBURN PUBLIC ART MURAL COMMITTEE AND PROVIDING FOR A PROCESS FOR THE CITY'S CONSIDERATION OF PUBLIC ART MURALS

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Approval by Woodburn Public Art Mural Committee. No person shall commence creation of any public mural without first obtaining approval from the Woodburn Public Art Mural Committee and agreeing to donate the mural to the City of Woodburn as provided in this Ordinance. Murals that are created or exist without approval from the Woodburn Public Art Mural Committee or are inconsistent with the conditions of approval from the Woodburn Public Art Mural Committee are not public art murals and are subject to the regulations contained in the Woodburn Development Ordinance and other applicable ordinances.

Section 2. Creation of Woodburn Public Art Mural Committee. The Woodburn Public Art Mural Committee ("the Committee") is hereby created by the Woodburn City Council and is delegated power and authority pursuant to this Ordinance.

Section 3. Composition of Woodburn Public Art Mural Committee.

A. The Woodburn Public Art Mural Committee shall consist of five members appointed by the Mayor to a full or unexpired term, and confirmed by the City Council. Any vacancy in the Committee shall be filled by appointment by the Mayor with the consent of the City Council for the unexpired portion of the term.

B. The Woodburn Public Art Mural Committee shall consist of two City Councilors, two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education; and one at-large member.

C. All members of the Committee shall be legal residents of the City of Woodburn. Except that the two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education may reside outside the Woodburn city limits.

Section 4. Terms of Office.

A. The terms of office of each Committee member shall be three years, or until a successor is appointed and qualified. The terms of Committee members shall be staggered so that the term of office of not more than two members will expire in the same year. The terms of office shall expire at midnight on December 31.

B. Members of the Committee shall receive no compensation for their services.

Section 5. Organization of the Committee.

A. The Committee shall elect a Chair and a Vice Chair.

B. The Economic and Development Services Director shall serve as Secretary to the Committee. The Secretary, supported by other city staff, shall provide notice of public meetings and public hearings, and keep minutes of all proceedings of the Committee in accordance with state law and city ordinances.

C. Three members of the Committee shall constitute a quorum.

D. The regular meeting place of the Committee shall be at Woodburn City Hall.

E. Meetings of the Committee shall be convened by the Chair of the Committee or by the Economic and Development Services Director.

Section 6. Functions and Duties of the Committee. The Woodburn Public Art Mural Committee is delegated the authority pursuant to this Ordinance to select, acquire, receive, document and register public art murals on behalf of the City of Woodburn.

Section 7. Public Art Mural Selection Criteria.

A. The Woodburn Public Art Mural Committee shall consider and apply the following selection criteria in selecting and acquiring public art murals:

1. Strength of artist's concept for, and originality of, proposed public art mural,

2. Demonstrated craftsmanship of artist,

3. Appropriateness of scale of the public art mural to the wall on which the proposed public art mural will be painted/attached,

4. Appropriateness of the scale of the public art mural to the surrounding neighborhood,

5. Architectural, geographical, socio-cultural and/or historical relevance of the public art mural to the site,

6. General support/advocacy for the public art mural from the building owner/user, surrounding neighborhood, adjacent businesses, and arts community,

7. Ability to complete the proposed public art mural,

8. The proposed public art mural will not be located on a single family dwelling, duplex, or multi-family dwelling, as used in this subsection, single family dwellings, duplexes, or multi family dwellings does not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings.

9. The proposed public art mural will not contain electrical components, three dimensional structural elements; employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance of the public mural or changes the mural image or message,

10. The proposed public art mural will be located in a manner that is visible to the public.

Section 8. <u>Public Art Mural Application.</u> An application for the proposed public art mural will be submitted on a form prepared by the Economic and Development Services Director. The application will include the location, materials, size/dimensions, written description of the mural, and an explanation of how the mural meets the selection criteria specified in this Ordinance. In addition, an Easement Agreement shall be submitted that includes: a legal description of the property upon which the mural will be placed, a sketch of the Public Art Mural as it will be placed on the property, proof of ownership of the property (i.e. a copy of the deed), and proof of identity of the person who has the authority to sign the easement.

Section 9. <u>Public Art Mural Application Fee.</u> The application fee for a proposed public art mural is initially set by the City Council at $500. This fee may be adjusted as by the City Council as appropriate as part of the Master Fee Schedule.

Section 10. <u>Easement Automatic Renewal.</u> The approval and acceptance of each public art mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the public mural will be located. The easement shall be for a period of seven years and shall automatically renew and continue for

successive seven year terms unless it is terminated by either party within thirty days after the expiration of any seven year term.

Section 11. **Termination of Easement by Building Owner**. The easement may be terminated by the Building Owner at any time with the City's written consent upon the Building Owner's showing of any of the following: (i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or (ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or (iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Public Art Mural; or (iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Public Art Mural substantially impedes the Building Owner's reasonable use and enjoyment of the property. The City shall not unreasonably withhold consent to termination upon the Building Owner's satisfactory demonstration of any of the foregoing conditions of termination.

Section 12. **Termination of Easement by City.** The City may terminate the easement at any time at its sole discretion upon thirty days written notice should the Building Owner fail to substantially perform its obligations under the Public Art Mural Easement Agreement.

Section 13. **Notice of Public Hearing.** The Committee shall hold a public hearing on the proposed public art mural. Written notice of a public hearing shall be published once in a newspaper of general circulation and shall be posted on the building where the public mural will be placed. Public notice shall be given no later than thirty days before the public hearing. The notice shall explain the purpose of the hearing, and state that the public mural application is available for inspection at the office of the Economic and Development Services Director.

Section 14. **Public Hearing.** At the public hearing, any interested person shall be afforded the opportunity to speak or to present written evidence to the Committee.

Section 15. **Final Decision.** After the conclusion of the public hearing, the Committee shall deliberate and make a final decision of the proposed public art mural. The final decision by the Committee shall be in written form and shall contain findings and conclusions explaining how the public art mural selection criteria were applied to the application.

Section 16. **Notice of Final Decision.** The Committee shall provide notice of its final decision to the applicant and all persons who presented testimony or submitted written evidence at the public hearing.

Section 17. Judicial Review of Final Decision. The final decision of the Committee is not a land use decision and is reviewable exclusively by Writ of Review filed in the Marion County Circuit Court as provided in ORS 34.010 to ORS 34.102.

Passed by the Council August 13, 2012 and approved by the Mayor August 29, 2012.

ORDINANCE NO. 1795

AN ORDINANCE PROVIDING FOR CONSTRUCTION PERMIT FEES FOR WORK IN PUBLIC RIGHT-OF-WAY; AND PROVIDING FOR DISPOSITION OF PROCEEDS.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. **Permits.** All street, water, sewer and storm drain service connections, installations, and alterations and franchisee installations and alterations, other than those activities exempted by Section 7 of this ordinance, in the City of Woodburn right-of-way shall require a permit from the City. The application shall be filed with the Public Works Department and at the time of issuance of the permit a fee shall be paid as outlined in Section 3 of this ordinance. No permit fee is required for those exempted by Section 4 or by Section 7 of this ordinance.

Section 2. **Engineering Plan**. Each type of construction project, such as water or sewer, will constitute a separate project. An engineering plan shall be required and reviewed by the City on all major construction projects before a permit can be issued. There shall be no charge for the engineering plan review and approval.

Section 3. **Fees**. The construction permit charge in the City of Woodburn shall be as follows:

Cost	Fee
Under $5,000	5% of cost but not less than $10
$ 5,000 - $25,000	$ 250 + 4% over $ 5,000
$25,000 - $100,000	$1,000 + 3% over $ 25,000
Over $100,000	$3,000 + 2% over $100,000

Section 4. **Franchisee Exemption**. Franchisees will not be required to pay a permit fee, however, a percentage of the franchise fee shall be diverted to Public Works to cover the cost of permit, plan review and general inspection process.

Section 5. **Public Works Technical Fund**. Starting in the fiscal year 1983-84, and thereafter each succeeding year, the City Recorder shall transfer an amount equal to 4 percent (4%) of the franchise fee from telephone, electric, natural gas, and cable television to the Public Works Technical Fund, at the time of receipt. [Section 5 as amended by Ordinance No. 1805, passed January 10, 1983.]

Section 6. **Construction Permit Fees Fund** All payments received by the City under the provisions of Section 3 of this ordinance shall be deposited in, and credited to, the Construction Permit Fees Fund of the City of Woodburn, and used by the Public Works Department for engineering inspection and related activities.

Section 7. **Exemptions**. The City may not require a construction permit fee on:

(1) Construction activity performed by City crews.

(2) Certain construction activities not involving underground main extensions by a franchisee.

(3) Wheelchair ramp construction.

(4) Construction activities outside improved portions of street and/or activities covered by other City fees.

Section 8. **Materials and Methods**. Only City approved materials and methods will be used on a project during excavation and fill in the public right-of-way.

Section 9. **Inspections.** A minimum of 24 hours notice shall be provided to the City to inspect an approved construction project.

Section 10. **Interpretation and Enforcement**. Interpretation and enforcement of this ordinance shall be the responsibility of the City Engineer.

Section 11. **Civil Infraction Assessment**. A violation of any provision of this ordinance constitutes a class 1 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 11 as amended by Ordinance 2008, passed October 24, 1988.]

Passed by the Council November 4, 1982, and approved by the Mayor November 9, 1982.

ORDINANCE NO. 1917

AN ORDINANCE REGULATING THE CONSTRUCTION, ALTERATION AND REPAIR OF SIDEWALKS.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions**. Unless the context requires otherwise, the following mean:

(1) Person. A natural person, firm, corporation or other legal entity.

(2) Sidewalks. The part of the street right-of-way or an easement which contains a walking structure between the curb lines on the pavement or gravel edge of a roadway and the adjacent property lines, including the driveway approach.

(3) Major construction. Work that requires new construction or alteration and repair of more than 50% of the existing or future sidewalk area.

(4) Minor construction. Work that requires alteration or repair of less than 50% of the existing sidewalk area.

Section 2. **Duty to Repair Sidewalks**. The owner of land adjoining a city street shall maintain in good repair the adjacent sidewalk whenever it becomes damaged or deteriorated in any way.

Section 3. **Liability for Sidewalk Injuries**.

(1) The owner of real property responsible for maintaining the adjacent sidewalk shall be liable to any person injured because of failure of the owner to maintain the sidewalk in good condition.

(2) If the City is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty which this ordinance imposes, the person shall reimburse the City for the amount of damages thus paid and the attorney fees and costs of defending against the claim of damages. The City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

Section 4. **Standards and Specifications**. Sidewalks shall be constructed, altered and repaired in accordance with City standards and specifications.

Section 5. **Submission of Plans**. No person shall construct, alter or repair a sidewalk within the City without first making application for a permit and submitting the plans for the proposed work. The application shall be made to the City Engineer's office, and all applicable standards and specifications established under Section 4 shall be met by the plans, and thereafter the City Engineer or designee may issue a permit for the proposed work. There will be no charge for the permit.

Section 6. **Supervision of Work**. The property owner or agent thereof, may perform construction, alteration or repair of sidewalks after obtaining a permit from the City Engineer's office. The City Engineer or designee may inspect any materials and construction details as in the Engineer's judgment may be necessary to insure compliance with the applicable standards and specifications.

Section 7. **Notice to Repair or Make Alterations**.

(1) When major construction is involved the Council shall, by motion, direct the City Engineer to issue a notice.

(2) When minor construction is involved and the repair or alteration is brought to the City Engineer's attention, the Engineer may issue a notice directly.

(3) The notice shall require the owner of the property adjacent to the sidewalk to complete the work within 60 days after service of notice. The notice shall also state that if the work is not completed by the owner within the 60-day time period, the City may complete it and assess the cost against the property adjacent to the sidewalk.

(4) The City Engineer shall cause a copy of the notice to be served upon the owner of the property adjacent to the sidewalk, or the notice may be served by registered or certified mail, return receipt requested. If after diligent search the owner is not discovered, the City Engineer shall cause a copy of the notice to be posted in a conspicuous place on the property, and such posting shall have the same effect as service of notice by mail or by personal service upon the owner of the property.

(5) The person serving the notice shall file with the Recorder a statement stating the time, place and manner of service of notice.

Section 8. **City May Alter or Repair Sidewalk**. If the sidewalk alteration or repair is not completed within 60 days after service of the notice, the City may complete it. Upon completion of the project, the City Engineer shall submit a report to the Council. The report shall contain an itemized statement of the cost of the work.

Section 9. **Assessment for Sidewalk Work Done by City**. Upon receipt of the report, the Council, by ordinance, shall assess the cost of the work against the property adjacent to the sidewalk. The assessment shall be a lien against the property and may be collected in the same manner as is provided for the collection of street improvement assessments.

Section 10. **Sidewalk Construction Requested by the Property Owner**. If a property owner petitions the Council for an order to build a sidewalk on the part of the street abutting his or her property, agrees to pay cash or to make application to pay the cost in installations as provided by the Bancroft Bonding Act (ORS 223.205 to 223.295), waives the right of service and publication of notice of construction, and consents to the assessment of the property upon which the sidewalk abuts, the Council

may order the construction of the requested sidewalk, if in its judgment the sidewalk should be built.

Section 11. **Penalty**. A violation of any section of this ordinance constitutes a class 1 civil infraction and shall be handled according to the procedures established by ordinance relating to civil infractions.

Section 12. **Severability**. Each portion of this ordinance constitutes a class 1 civil infraction and shall be handled according to the procedures established by ordinance relating to civil infractions.

Section 13. **Repeal**. Ordinance No. 778 (enacted February 3, 1942) is repealed.

Passed by the Council July 8, 1985 and approved by the Mayor July 9, 1985.

ORDINANCE 2105

AN ORDINANCE PROVIDING PROCEDURES FOR LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS; REPEALING ORDINANCE 1879, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Initiating Improvements.

(1) When the Council considers it necessary to require that improvements to a street, sewer, water facility, sidewalk, parking, curbing, drain or other public improvement defined in ORS 223.387 be paid for in whole or in part by special assessment according to benefits conferred, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer to make a survey of the improvement and a written report.

(2) When owners of two-thirds of the property that will benefit specially by improvements defined in subsection (1) request by written petition that the Council initiate an improvement, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer to make a survey of the improvement and a written report.

Section 2. Engineer's Report. The Engineer's report may contain, but is not limited to, the following:

(1) A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for payment of the cost.

(2) Plans, preliminary sketches and estimates of work to be done. If the proposed project is to be carried out in cooperation with another governmental agency, the Engineer may adopt plans, specifications and estimates of that agency.

(3) An estimate of probable cost of the improvement, including legal, administrative and engineering cost.

(4) An estimate of unit cost of the improvement to the benefited properties, per square foot, per front foot, or another unit of cost.

(5) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to the benefited properties.

(6) A description of each lot, parcel of land, or portion of land to be benefited, with names of the record owners and, when readily available, names of contract purchasers, as shown on books and records of the Marion County Tax Department. To describe each lot or parcel or land under provisions of this section, it shall be sufficient to use the tax account number assigned to the property by the tax department or shown on books and records of the Marion County Clerk.

(7) A recommendation regarding the rate of interest, but it shall be as the governing body may determine based on a certain percent per annum, to be paid on assessments bonded under the Bancroft Bonding Act and ORS Chapter 223.

Section 3. Action on Engineer's Report. After reviewing the Engineer's report, the Council may approve the report, modify the report and approve it as modified, require the Engineer to supply additional or different information for the improvement, or abandon the improvement.

Section 4. Resolution and Notice of Hearing. After the Council has approved the Engineer's report as submitted or modified, the Council shall declare by resolution that it intends to make the improvement and direct the Recorder to give notice of the Council's intention by two publications, one week apart, in a newspaper of general circulation in the city. The notice shall contain the following:

(1) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall be not less than 10 days after the first publication of notice, at which objections and remonstrances to the improvement will be heard by the Council; and that action on any proposed public improvement, except a sidewalk or except an improvement unanimously declared by the Council to be needed at once because of an emergency, shall be suspended for six months upon written remonstrance thereto by the owners of a majority of the land to be specially assessed therefor.

(2) A description of the property to be benefited by the improvement, owners of the property as shown on the books and records of the Marion County Tax Department, as the Engineer's estimate of total cost of the improvement to be paid by special assessment to benefited properties.

For purposes of this subsection it shall be sufficient to describe the property to be benefited by a metes and bounds description or by the tax account number assigned to the property and used by the Marion County Tax Department or the subdivision lot and block number or the book and page designations shown on books and records of the Marion County Clerk.

Section 5. Manner of Doing Work. The Council may at its discretion provide that the construction work may be done in whole or in part by the City, by contract, by another governmental agency, or by a combination of the above.

Section 6. Ordinance of Approval or Abandonment of Improvement. The Council may by ordinance at the time of the hearing or within 90 days thereafter, order the improvement carried out in accordance with the resolution, modify the proposed improvement, or, if the project was initiated by Council motion and not by petition of property owners, abandon the improvement.

Section 7. Call for Bids. The City may advertise for bids for construction of all or any part of the improvement project on the basis of the Council-approved 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 objection to the proposed improvement.

Section 8. Method of Assessment and Alternative Methods of Financing.

(1) The Council, in adopting a method of assessing the cost of the improvement, may:

(a) Use any just and reasonable method to determine the extent of any improvement district consistent with the benefits derived.

(b) Use any just and reasonable method of apportioning the sum to be assessed among the benefited properties.

(c) Authorize payment by the City of all or part of the cost of an improvement when in the opinion of the Council the topographical or physical conditions, unusual or excessive public travel, or other character of the work involved warrants only partial payment or no payment of the cost by the benefited property.

(2) Nothing contained in this section shall preclude the Council from using other means of financing improvements, including federal and state grant-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or other legal means of finance. If other means of financing are used, the Council may levy special assessments according to benefits derived to cover any remaining part of the cost.

Section 9. Final Assessment Ordinance.

(1) If the Council caused the public improvement to be made and the actual cost has been determined, upon completion of the project the Council shall determine whether the benefited property shall bear all or a portion of the cost. The Recorder or other person designated by the Council shall prepare the final assessment for each lot within the assessment district and file the assessments in the Recorders office.

(2) Notice of the proposed assessment shall be published and mailed or personally delivered to the owner of each lot proposed to be assessed at the address shown on the Marion County Tax Assessor's rolls. The notice shall state the amount of final assessment on the property and fix a date by which time any objections shall be filed with the Recorder and the date and time set for the public hearing at which the Council will hear objections. An objection shall state the grounds for the objection.

(3) At the hearing the Council shall consider the objections and may adopt, correct, modify or revise the assessment against each lot in the district according to special peculiar benefits accruing to it from the improvement.

Section 10. Notice of Assessment.

(1) Within 10 days after the ordinance levying assessments has been passed, the Recorder shall send a notice of assessment to the owner of the assessed property by registered or certified mail and public notice of the assessment twice in a newspaper of general circulation in the city. The first publication of notice shall be not later than 20 days after the date of assessment ordinance.

(2) The notice of assessment shall include the name of the property owner, a description of the assessed property, the amount of the assessment, and the date of the assessment ordinance and shall state that interest will begin to run on the assessment and the property will be subject to foreclosure unless the owner either makes application to pay the assessment in installments within 10 days after the date of the first publication of notice or pays the assessment in full within 30 days after the date of the assessment ordinance.

Section 11. Lien Record and Foreclosure Proceedings.

(1) After passage of the assessment ordinance, the Recorder shall enter into the docket of liens a statement of the amount assessed on each lot, parcel of land or portion of land, description of the improvement, names of property owners, and the date of the assessment ordinance. Upon entry in the lien docket, the amounts shall become liens and charges on the lots, parcels of land or portions of land that have been assessed for improvement.

(2) Assessment liens of the City shall be superior and prior to all other liens or encumbrances on property insofar as state law permits.

(3) The City may enter a bid on property being offered at a foreclosure sale. The City bid shall be prior to all bids except those made by persons who would be entitled under state law to redeem the property.

Section 12. Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the Recorder, who shall determine whether there has been an error. If there has been an error, the Recorder shall recommend to the Council an amendment to the assessment ordinance to correct the error. On enactment of the amendment, the Recorder shall make the necessary correction in the docket of liens and send a correct notice of assessment by registered or certified mail.

Section 13. Supplemental Assessments. If a supplemental assessment is required pursuant to Section 18 of this ordinance, the Council may declare the insufficiency by motion and prepare a proposed supplemental assessment. The

Council shall set a time for hearing objections to the supplemental assessment and direct the City Recorder to publish one notice in a newspaper of general circulation in the city. After the hearing, the Council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of liens as provided by Section 11. Notice of the supplemental assessment shall be published and mailed, and collection of the assessment shall be made in accordance with Sections 10 and 11.

Section 14. Rebates. If a rebate is required pursuant to Section 18 of this ordinance, the Council shall ascertain and declare the excess by ordinance. When declared, the excess amounts must be entered on the lien docket as a credit on the appropriate assessment. If an assessment has been paid, the person who paid it or that person's legal representative shall be entitled to payment of the rebate credit.

Section 15. Remedies.

(1) Subject to curative provisions of Section 17 and rights of the city to reassess as provided in Section 18, proceedings for writs of review and equitable relief may be filed not earlier than 30 days nor later than 60 days after filing written objection as provided by Section 9.

(2) A property owner who has filed a written objection with the Recorder before the public hearing may have the right to apply for a writ of review based on the Council's exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of a substantial right of the owner, if the facts supporting the claim have been specifically set forth in the written objections.

(3) A property owner who has filed a written objection with the Recorder before the public hearing may begin an action for equitable relief based on a total lack of jurisdiction on the part of the city. If notice of the improvement was not sent to the owner and if the owner did not have actual knowledge of the proposed improvement before the hearing, the owner may file a written objection alleging lack of jurisdiction
with the Recorder within 30 days after receiving notice or knowledge of the improvement.

(4) A provision of this section shall not be construed to lengthen the period of redemption or to affect the running of a statute of limitation. A proceeding on a writ of review or for equitable relief shall be abated if proceedings are begun and diligently pursued by the Council to remedy or cure alleged errors or defects.

Section 16. Abandonment of Proceedings. The Council may abandon proceedings for improvements made under Section 1 to 15 at any time before final completion of the improvements. If liens have been placed on property under this procedure, they shall be canceled, and payments made on assessments shall be refunded to the person who paid them or to that person's legal representatives.

Section 17. Curative Provisions.

(1) An improvement assessment shall not be rendered invalid by reason of:

(a) Failure of the Engineer's report to contain all information required by Section 2.

(b) Failure to have all information required in the improvement resolution, assessment ordinance, lien docket, or notices required to be published and mailed.

(c) Failure to list the name or mail notice to an owner of property as required by this ordinance.

(d) Any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect on the person complaining.

(2) The Council shall have authority to remedy and correct all matters by suitable action and proceedings.

Section 18. Reassessment. When an assessment, supplemental assessment, or reassessment for an improvement made by the city has been set aside, annulled, declared void, or its enforcement restrained by a court of this state or by a federal court having jurisdiction, or when the Council doubts the validity of the assessment, supplemental assessment, rebate, or any part of it, the Council may make a reassessment in the manner provided by state law.

Section 19. Severability. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of this ordinance.

Section 20. Repeal. Ordinance No. 1879 is hereby repealed.

Section 21. [Emergency clause.]

Passed by the Council March 22, 1993, approved by the Mayor March 23, 1993.

ORDINANCE NO. 2237

AN ORDINANCE ESTABLISHING A PROCESS FOR THE FORMATION OF A REIMBURSEMENT DISTRICT IN ORDER TO PROVIDE A MECHANISM WHEREBY THE PROPERTIES WHICH WILL BENEFIT BY THE CONSTRUCTION OF THE REQUIRED PUBLIC IMPROVEMENTS BY CRAIG REALTY GROUP, WOODBURN LLC, WILL SHARE IN THE COST OF THOSE IMPROVEMENTS; PROTECTING THE PUBLIC INTEREST; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions**. The following terms are defined as follows for the purposes of this Ordinance.

A. "City" means the City of Woodburn, Oregon.

B. "Developer" means a person who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the City for reimbursement for the expense of the improvement.

C. "Development Permit" means any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, or driveway permit.

D. "Person" means a natural person, the person's heirs, executors, administrators or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or representative thereof.

E. "Public Improvement" means any construction, reconstruction or upgrading of water, stormwater, sewer or street improvements

F. "Public Works Director" means the Public Works Director of the City of Woodburn.

G. "Reimbursement Agreement" means the agreement between the Developer and the City which is authorized by the City Council and executed by the City Administrator, providing for the installation of and payment for reimbursement district public improvements.

H. "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of public improvements, financed in whole or in part by the Developer.

I. "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement. The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district

and shall determine the methodology for imposing a fee which considers the cost of reimbursing the Developer for financing the construction of the improvement within the reimbursement district.

Section 2. Application to Establish a Reimbursement District.

A. A person who is required to or chooses to finance some or all of the cost of a public improvement which will be available to provide service to property other than property owned by the person may by written application filed with the Public Works Director request that the City establish a reimbursement district. The public improvement must be of a size greater than that which would otherwise ordinarily be required in connection with an application for a building permit or development permit or must be available to provide service to property other than property owned by the Developer, so that the public will benefit by making the improvement.

B. The application shall be accompanied by an application fee, in the amount of $1000, which the City Council has determined reasonable to cover the cost of the preparation of the Public Works Director's Report and notice pursuant to this ordinance.

C. The application shall include the following:

1. A written description of the location, type, size and cost of each public improvement which is to be eligible for reimbursement.

2. A map showing the boundaries of the proposed reimbursement district, the tax account number of each property, its size and boundaries.

3. A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage and square footage of said properties, or similar data necessary for calculating the apportionment of the cost; the property or properties owned by the Developer; and the names and mailing addresses of owners of other properties to be included in the proposed reimbursement district.

4. The actual or estimated cost of the public improvements.

D. The application may be submitted to the City prior to the installation of the public improvement but not later than 180 days after completion and acceptance of the public improvements by the City.

Section 3. Public Works Director's Report. The Public Works Director shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Public Works Director may require the submission of other relevant information from the Developer in order to assist in the evaluation. The Public Works Director shall prepare a written report for the City Council that considers and makes a recommendation concerning each of the following factors:

A. Whether the Developer will finance, or has financed some or all of the cost of the public improvement, thereby making service available to property, other than that owned by the Developer.

B. The boundary and size of the reimbursement district.

C. The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the Developer should be reimbursed for each public improvement.

D. A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with City approval, be partitioned, subdivided, altered or modified at some future date.

E. The amount to be charged by the City for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the City at the time the agreement is signed.

F. Whether the public improvements will or have met City standards.

G. Whether it is fair and in the public interest to create a reimbursement district.

Section 4. <u>Amount to be Reimbursed</u>.

A. A reimbursement fee shall be computed by the City for all properties within the reimbursement district, excluding property owned by or dedicated to the City or the State of Oregon, which have the opportunity to use the public improvements, including the property of the Developer, for formation of a reimbursement district. The fee shall be calculated separately for each public improvement. The Developer for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for its own property.

B. The cost to be reimbursed to the Developer shall be limited to the cost of construction engineering, construction, and off-site dedication of right of way. Construction engineering shall include surveying and inspection costs and shall not exceed 7.5% of eligible public improvement construction cost. Costs to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by the Developer from a third party in order to complete off-site improvements.

C. No reimbursement shall be allowed for the cost of design engineering, financing costs, permits or fees required for construction permits, land or easements dedicated by the Developer, the portion of costs which are eligible for systems development charge credits or any costs which cannot be clearly documented.

D. Reimbursement for legal expenses shall be allowed only to the extent that such expenses relate to the preparation and filing of an application for reimbursement.

E. Reimbursement for the amount of the application fee required by Section 2 on this ordinance.

Section 5. Public Hearing.

A. Within 45 days after the Public Works Director has completed the report required in Section 3, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The City Council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

B. Not less than ten (10) days prior to any public hearing held pursuant to this Ordinance, the Developer and all owners of property within the proposed district shall be notified of the public hearing and the purpose thereof. Such notification shall be accomplished by either regular and certified mail or by personal service. Notice shall be deemed effective on the date that the letter of notification is mailed Failure of the Developer or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the City Council's action to approve the same.

C. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing, subject to the same notice requirements, shall be held after the improvement has been accepted by the City. At that time, the City Council at its discretion may modify the resolution to reflect the actual cost of the improvement(s).

Section 6. City Council Action.

A. After the public hearing held pursuant to Section 5(A), the City Council shall approve, reject or modify the recommendations contained in the Public Works Director's report. The City Council's decision shall be contained in a resolution. If a reimbursement district is established, the resolution shall include the Public Works Director's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving any city permits applicable to development of that parcel as provided for in Section 10.

B. The resolution shall establish an interest rate to be applied to the reimbursement fee as a return on the investment of the Developer. The interest rate shall be fixed and computed against the reimbursement fee as simple interest and will not compound.

C. The resolution shall instruct the City Administrator to enter into an agreement with the Developer pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the City. The agreement shall contain at least the following provisions:

1. The public improvement(s) shall meet all applicable City standards.

2. The total amount of potential reimbursement to the Developer shall be specified.

3. The total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s).

4. The Developer shall guarantee the public improvement(s) for a period of twelve (12) months after the date of installation.

5. A clause in a form acceptable to the City Attorney stating that the Developer shall defend, indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the reimbursement district, including any City costs, expenses and attorney fees related to collection of the reimbursement fee should the City Council decide to pursue collection of an unpaid reimbursement fee under Section 10(H).

6. A clause in a form acceptable to the City Attorney stating that the Developer agrees that the City, can not be held liable for any of the Developer's alleged damages, including all costs and attorney fees, under the agreement or as a result of any aspect of the formation of the reimbursement district, or the reimbursement district process, and that the Developer waives, and is estopped from bringing, any claim, of any kind, including a claim in inverse condemnation, because the Developer has benefited by the City's approval of its development and the required improvements.

7. Other provisions the City determines necessary and proper to carry out the provisions of this Ordinance.

A. If a reimbursement district is established by the City Council, the date, of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

Section 7. **Notice of Adoption of Resolution**. The City shall notify all property owners within the district and the Developer of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation specifying the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this ordinance.

Section 8. **Recording the Resolution**. The City Recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the Marion County Clerk so as to provide notice to potential purchasers of property within the district. Said recording shall not create a lien. Failure to make such recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

Section 9. **Contesting the Reimbursement District**. No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after sixty (60) days following the adoption of a resolution establishing a reimbursement district and any such legal action shall be exclusively by Writ of Review pursuant to ORS 34.010 to ORS 34.102.

Section 10. **Obligation to Pay Reimbursement Fee**.

A. The applicant for a permit related to property within any reimbursement district shall pay the City, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if within 10 years after the date of the passage of the resolution forming the reimbursement district, the person applies for and receives approval from the City for any of the following activities:

1. A building permit for a new building;

2. Building permits(s) for any addition(s) modification(s), repair(s) or alteration(s) of a building, which exceed twenty five percent (25%) of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the county Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;

3. A development permit, as that term is defined by this ordinance;

4. A City permit issued for connection to a public improvement.

B. The City's determination of who shall pay the reimbursement fee and when the reimbursement fee is due is final.

C. In no instance shall the City, or any officer or employee of the City, be liable for payment of any reimbursement fee, or portion thereof, as a result of the City's determination as to who should pay the reimbursement fee. Only those payments which the City has received from or on behalf of those properties within a reimbursement district shall be payable to the Developer. The City's general fund or other revenue sources shall not be liable for or subject to payment of outstanding and unpaid reimbursement fees imposed upon private property.

D. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.

E. Nothing in this ordinance is intended to modify or limit the authority of the City to enforce development conditions which have already been imposed against specific properties.

F. Nothing in this ordinance is intended to modify or limit the authority of the City, in the future, to impose development conditions against specific properties as they develop.

G. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection 10(A) unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. Where approval is given as specified in subsection 10(A), but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

H. The date of reimbursement under this Ordinance shall extend ten (10) years from the date of the formation of a reimbursement district formation by City Council resolution.

I. The reimbursement fee is immediately due and payable to the City by property owners upon use of a public improvement as provided by this ordinance in section 10(A). If connection is made or construction commenced without required city permits, then the reimbursement fee is immediately due and payable upon the earliest date that any such permit was required.

J. Whenever the full reimbursement fee has not been paid and collected for any reason after it is due, the City Administrator shall report to the City Council the amount of the uncollected reimbursement, the legal description of the property on which the reimbursement is due, the date upon which the reimbursement was due and the property owner's name or names. The City Council shall then, by motion, set a public hearing date and direct the City Administrator to give notice of that hearing to each of the identified property owners, together with a copy of the City Administrator's report concerning the unpaid reimbursement fee. Such notice may be either by certified mail or personal service. At the public hearing, the City Council may accept, reject or modify the City Administrator's report. If the City Council determines that the reimbursement fee is due but has not been paid for whatever reason, the City Council may, at its sole discretion, act, by resolution, to take any action, it deems appropriate, including all legal or equitable means necessary to collect the unpaid amount. After the City Council has made the determination that the reimbursement fee is due but has not been paid, the Developer shall have a private cause of action against the person legally responsible for paying the reimbursement fee.

Section 11. <u>Public Improvements</u>. Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the City.

Section 12. **Multiple Public Improvements**. More than one public improvement may be the subject of a reimbursement district.

Section 13. **Collection and Payment; Other Fees and Charges**.

A. The Developer shall receive all reimbursement collected by the City for reimbursement district public improvements. Such reimbursement shall be delivered to the Developer for as long as the reimbursement district agreement is in effect. Such payments shall be made by the City within ninety (90) days of receipt of the reimbursements.

B. The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the City.

Section 14. **Nature of the Fees.** The City Council finds that the fees imposed by this Ordinance are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

Section 15. **Severability.** If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in effect.

Section 16. [Emergency clause.]

Passed by the Council and approved by the Mayor June 28, 1999.

ORDINANCE NO. 2424

AN ORDINANCE UPDATING AND REVISING THE PROCEDURES RELATED TO TREES WITHIN THE CITY OF WOODBURN; REPEALING ORDINANCE 1908; AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. "Certified Arborist" means a person who has met the criteria for certification from the International Society of Arboriculture or American Society of Consulting Arborists, and maintains his or her accreditation.

B. "Park tree" means a tree, shrub, bush, or other woody vegetation in public parks or areas to which the public has free access.

C. "Person" means an individual or legal entity.

D. "Private infrastructure" means a driveway apron or paved or concrete private walkway located within the City right-of-way.

E. "Private tree" means a tree, shrub, bush, or other woody vegetation located on private property other than a dedicated right-of-way or public easement, or public parks and grounds.

F. "Public infrastructure" means public water and sewer lines, electric lines, gas lines, telephone or cable television lines, curbs, and sidewalks located within the public right-of-way, and other public improvements.

G. "Public Works Director" means the Woodburn Public Works Director or designee.

H. "Real Property Owner" means the person holding legal title to the real property or properties upon which a street tree is located.

I. "Remove" or "Removal" means to cut down a tree, or remove 50% or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. Remove or removal includes topping. Remove or removal includes but is not limited to damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. It does not include normal trimming or pruning.

J. "Street tree" means a tree, shrub, or other woody vegetation on land, the trunk of which is located wholly or partially within the right-of-way along either side of a street, avenue or other way or within a dedicated side of a street, avenue or other way.

K. "Topping" means the severe cutting back of a tree's limbs to stubs three inches or larger in diameter within the tree's crown to such a degree so as to remove the natural canopy and disfigure the tree.

Section 2. Permit to Remove Trees Required.

A. No person shall remove a street tree without obtaining a permit from the Public Works Director. Permits to remove street trees will be granted only if one of the following conditions exist:

(1) The tree is dangerous and may be made safe only by its removal.

(2) The tree is dead or dying, and its condition cannot be reversed.

(3) The tree is diseased and presents a potential threat to other trees within the City, unless it is removed.

(4) The tree is causing damage, which cannot be corrected through normal tree maintenance, to public infrastructure as defined by this Ordinance.

(5) The tree is causing damage, which cannot be corrected through normal tree maintenance, to private infrastructure as defined by this Ordinance.

B. Any application for a permit to remove a street tree shall be supported by a report prepared by an Arborist as defined by this Ordinance and paid for by the applicant for the permit.

C. Street Tree Removal Applications and Street Tree Permits shall be prepared by the Public Works Director in a form approved by the City Attorney.

D. Street tree removal permits shall remain valid for a period of 180 days from the date of issuance. Permits that have lapsed are void. Trees removed after a tree removal permit has expired shall be considered a violation of this Ordinance.

E. Misrepresentation of any fact necessary for the City's determination for granting a tree removal permit shall invalidate the permit. The City may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false, or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may be related to matters including, without limitation, tree size, location, health or hazard condition, justification for issuance of permit, or owner's authorized signature.

Section 3. Requirement for Certified Arborist. Pruning, treating, or removing street or park trees shall be performed by or under the direct supervision of a Certified Arborist. Before a permit is granted by the Public Works Director, the arborist shall provide proof of current City business license and evidence of possession of liability insurance in the minimum amounts provided by ORS 30.270. Permits shall not be required of a City employee doing work on behalf of the City. Permits shall not be required of franchisees or other public service companies doing work in pursuit of their public service endeavors, provided that all such work is completed in conformance with any applicable franchise requirements and by or under the direct supervision of a Certified Arborist.

Section 4. City Cost Sharing for Street Tree Removal. Subject to the availability of funds in the City's budget, the Public Works Director is authorized to expend City funds to share in the cost of removal of street trees according to the following formula:

COST OF REMOVAL	OWNER SHARE	CITY SHARE
First $200	100%	0%
Above $200	50%	50%

The maximum City subsidy for one property shall not exceed $500, except in cases where the street tree removal is done exclusively for the protection of public infrastructure where the Public Works Director is authorized to have the City pay the entire cost. No subsidy shall be provided for trees removed at a Real Property Owner's request in order to protect private infrastructure. Additional guidelines for cost sharing of tree removal may be established, and amended from time to time as needed, by resolution of the City Council.

Section 5. Tree Replacement. The City may require the replacement by the Real Property Owner, at the Real Property Owner's expense, of a new tree after permission has been granted by the Public Works Director for the removal of an existing street tree. Replacement trees must have a minimum caliper of 2 inches at 4-foot height, be of a species that reaches the same height at maturity as surrounding street trees, and may not be a prohibited species under the Woodburn Development Ordinance.

Section 6. Woodburn Street Tree Planting Regulations. All street trees shall be planted in conformance with the Woodburn Street Tree Planting Regulations which shall be adopted, enforced, and administered by the Public Works Director consistent with the terms of this Ordinance. Copies of the Woodburn Street Tree Planting Regulations shall be on file in the City Recorder's office, Public Works Department, Community Development, and the Woodburn Public Library.

Section 7. Street Tree Species to be Planted. No person shall plant a street tree of any species that is prohibited by the Woodburn Development Ordinance without the written permission of the Public Works Director.

Section 8. Tree Maintenance by City. The City shall have the right to plant, prune, maintain, and remove trees located within the public right-of-way as may be necessary to protect public safety or to preserve or enhance the appearance of public property. The City may remove, or order to be removed at the expense of the Real Property Owner, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, telephone or cable television lines, natural gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest.

Section 9. Street Tree Maintenance by Owner.

A. In consideration of the value and benefits derived from the beauty and enjoyment of a street tree, the Real Property Owner shall have the responsibility, control, and shall bear the cost of maintenance and care of the street tree, and shall regularly inspect and remove defective conditions as necessary.

B. The Real Property Owner shall prune the branches of a street tree so that the branches do not obstruct the light from a street light or obstruct the view of any street intersection. The Real Property Owner shall maintain a clear space of 15 feet above the surface of the street and 10 feet above the surface of any sidewalk. The Real Property Owner shall remove all dead, diseased, or dangerous, or broken or decayed limbs which constitute a danger to the safety of the public.

C. The Real Property Owner shall be liable for injury, damage, or loss to persons or property caused by the Real Property Owner's failure to comply with subsection A or B of this section.

D. The City of Woodburn shall not be liable for injury, damage, or loss to person or property caused in whole or part by the defective or dangerous condition of any tree located in or upon a right-of-way. The Real Property Owner shall defend and hold harmless the City from all claims for loss and damage arising from the Real Property Owner's failure to comply with subsection A or B of this section.

Section 10. Mutilation and Topping of Trees.

A. Mutilation. Unless specifically authorized in writing by the Public Works Director, no person shall intentionally damage, cut, carve, transplant, or remove any park tree or street tree; attach or place any rope or wire (other than one used to support the tree itself), sign, poster, handbill, or other thing to it; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with it; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any such tree.

B. Tree Topping. No person shall top any park tree or street tree, except as authorized by the Public Works Director.

Section 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. The costs of removing stumps shall be borne by the Real Property Owner.

Section 12. Summary Powers for Removal of Dangerous or Nuisance Trees.

A. The City may prune a private tree when it interferes with the spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign.

B. The City may require or initiate removal of all or part of any dead, dangerous or diseased park, private or street tree when the tree constitutes a hazard to life, property, or harbors insects or disease which constitutes a potential threat to other trees within the City.

C. The City may remove or trim a tree described in this section or may require the property owner to remove or trim any such tree on private property, or in a dedicated right-of-way or utility easement abutting upon the owner's property. Failure of the property owner to remove or trim the tree within 30 days after receiving notice by the City Administrator is a violation of this Ordinance, and the Public Works Department may then remove or trim and tree and assess the costs as a lien against the property.

Section 13. Nuisance Abatement. All street trees that the Public Works Director requires to be removed pursuant to this Ordinance, constitute nuisances and are subject to the abatement and lien procedure contained in Ordinance 2338, the City of Woodburn Nuisance Ordinance.

Section 14. Enforcement.

A. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance.

B. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the city to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate any violations of this Ordinance.

Section 15. Separate Offenses. Each day during which a violation of this Ordinance continues shall constitute a separate offense for which a separate penalty may be imposed.

Section 16. Appeal. If the Public Works Director refuses to issue any permit under this Ordinance, or requires the removal of a tree, the Public Works Director shall provide written notification to the applicant who may appeal to the City Council in writing within ten calendar days after the date of the written notification from the Public Works Director. The City Council shall proceed to hear and determine the appeal, based upon information submitted by the permit applicant and the Public Works Director. Any review of the City Council's final decision shall be to the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 17. Severability. The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 18. Repeal. Ordinance 1908 is hereby repealed.

Section 19. Saving Clause. Notwithstanding the repeal of Ordinance1908, Ordinance 1908 shall remain in force for the purpose of authorizing the prosecution of a person who violated Ordinance 1908 prior to the effective date of this Ordinance.

Section 20. Effective Date. This Ordinance shall take effect on November 1, 2007.

Passed by the Council September 10, 2007 and approved by the Mayor September 12, 2007.

ORDINANCE NO. 1866

AN ORDINANCE ESTABLISHING REGULATIONS AND RATES FOR THE CITY WATER SYSTEM; AND REPEALING ORDINANCE NO. 1378, 1595, 1596, 1622 AND 1804.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

(1) Customer. The owner of property which is served by the City water system. A person, corporation, association or agency which rents or leases premises shall be considered an agent of the property owner.

(2) Mains. Distribution pipe lines that are part of the City water system.

(3) Premises. The integral property or area, including improvements thereon, to which water service is or will be provided.

(4) Service Connection. The pipe, valves and other equipment by means of which the City conducts water from its mains to and through the meter to the property line, but not including piping from the property line to the premises served.

Service Provided

Section 2. Regular Service.

(1) The City shall furnish and install a service connection of such size and location as a customer requests, provided that the request is reasonable. The service will be installed from the main to a point between the curb line and the property line of the premises if the main is in the street, or to a point in a City right-of-way or easement.

(2) The customer shall, at his own risk and expense, furnish, install and keep in good and safe condition equipment that may be required for receiving, controlling, applying and utilizing water. The City shall not be responsible for loss or damage caused by the improper installation of the equipment, or the negligence, want of proper care or wrongful act of the customer in installing, maintaining, using, operating or interfering with the equipment.

(3) The City shall not be responsible for damage to property caused by a spigot, faucet, valve or other equipment that is open when the water is turned on at the meter.

(4) A customer making any material change in the size, character or extent of the equipment or operation utilizing water service, or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if requested, amend his application.

(5) The service connection, whether located on public or private property, is the property of the City; and the City reserves the right to repair, maintain and replace it.

Section 3. Temporary Service.

(1) Charges for water furnished through a temporary service connection shall be the established rates for other customers.

(2) The applicant for temporary service will be required:

(a) To pay to the City, in advance at the option of the City, the estimated cost of installing and removing the facilities to furnish the service.

(b) To deposit an amount sufficient to cover bills for water during the entire period temporary service may be used, or to establish credit approved by the City.

(c) To deposit with the City an amount equal to the value of equipment loaned by the City. This deposit shall be refundable, less cost of any necessary repairs as provided in Subsection (3).

(3) The customer shall use all possible care to prevent damage to the meter or other equipment loaned by the City which are involved in furnishing the temporary service from the time they are installed until they are removed, or until 48 hours notice in writing has been given to the City that the contractor or other person is through with the meter and other equipment. If the meter or other equipment is damaged, the cost of making repairs shall be paid by the customer.

(4) Temporary service connections shall be disconnected and terminated within six months after installation unless an extension of time is granted in writing by the City.

Meters

Section 4. Meters.

(1) Meters shall be furnished and owned by the City.

(2) No rent or other charges shall be paid by the City for a meter or other equipment located on the customer's premises.

(3) Meters may be sealed by the City at the time of installation, and no seal shall be altered or broken except by one of its authorized agents.

(4) If a change in size of a meter and service is required, the installation shall be accomplished on the basis of a new connection.

Section 5. **Meter Error**. A customer may request the City to test the meter serving his premises. The customer shall deposit an amount to cover the reasonable cost of the test. This deposit will be returned if the meter is found to register more than 2 per cent fast. The deposit required of a customer requesting a meter test shall be as follows:

5/8 inch - 3/4 inch	$ 20.00
1 inch	30.00
1-1/2 inch	65.00
2 inch	100.00
3 inch	130.00
4 inch	150.00
6 inch	165.00
8 inch	175.00

Fees, Charges and Rates

Section 6. **Applications**.

(A) All water service connections, installations and alterations in the City shall be initiated by written application of each water customer. Each application shall be filed with the City and shall be accompanied by full payment of a water service installation charge and a water systems capacity fee in the amounts required by this ordinance.

(B) The Council may establish by motion a policy of connecting to an undersized main and recovery of associated costs. Yearly increases may be added to the established costs.

Section 7. **Water Service Installation Charges**.

(1) The water service installation charges in the City shall be as follows:

(a) For installation of a 3/4-inch service line and a 5/8-inch water meter: $150.00.

(b) For installation of a 1-inch service line, including meter: $300.00

(c) For installation of 1-1/2-inch and larger service lines and meters, the charge shall be actual cost of labor and materials furnished by the City, plus 15 per cent of said cost for administrative and overhead expense. Each [applicant] shall deposit the amount estimated by the water division with the application, and the final amount may be adjusted after installation is completed.

(2) All payments received by the City under the provisions of this section shall be deposited in, and credited to, the water fund of the City.

Section 8. **Water System Capacity Fee**.

(1) The water system capacity fee of the City shall be as follows:

(a) For single-family dwellings, trailers, manufactured dwelling units: $750.00.

(b) (i) For apartments and other multiple-family dwellings: $750.00 for the first unit and $375.00 for each unit in excess of one.

(b) (ii) For motel, hotel and R.V. park units: $750.00 for the first unit and $210.00 for each unit in excess of one.

(c) All other structures and facilities shall be charged according to options below:

(i) Requiring meter sizes up to 1½ inches: $750.000 plus $30.00 for each 1,000 square feet of area, or portion thereof, in excess of 2,000 square feet.

(ii) Requiring meter sizes above 1½ inches:

Size of Meter	System Capacity Fee
2"	$ 1,200.00
3"	2,625.00
4"	4,500.00
6"	9,750.00
Above 6"	Council approval necessary

(iii)The demand increase by a larger size meter will require an amount equal to the new size fee less the old size fee.

(d) No system capacity fee shall be charged to the services used for fire protection only, if the regular system capacity fee has been charged to serve the premises.

(e) All existing structures constructed prior to May 1977, and remaining on the same site to which the City was unable to provide a connection shall be charged greater of one-half the rate outlined above, or $375.00.

(2) All payments received by the City under the provisions of this section shall be deposited in, and credited to, the Capital Improvement Water Fund. [Section 8 amended by Ordinance No. 1973, passed April 13, 1987.]

Section 9. **Water Rates**. The rates and charges for the supply and use of water from the water system and mains of the City of Woodburn shall be as follows:

(a) Metered Services:

Service Size (Inches)	Quantity Allowed (Cubic Feet)	Minimum Monthly Charge (Dollars)
5/8" - 3/4"	400	$4.50
1"	800	6.80
1-1/2"	1,800	12.20
2"	3,200	19.95
3"	7,500	41.55
4"	15,000	83.10
6"	32,000	171.70
8"	57,000	299.10

These minimum charges are based on the size of service line, from main to meter, and entitle the user to the quantity shown per month.

(b) Water Consumed above minimum quantity allowed per month - $0.52 per 100 cubic feet.

(c-i) Single Residential: As per subsections "a" and "b" above.

(c-ii) Multiple Residential: $4.50 per unit per month in establishing the minimum for each service. Quantity allowed shall be the number of units times 400 cubic feet, or the above established quantity allowed for size of service, whichever is greater. Unless water service to premises is disconnected entirely, the minimum charge will apply to all units whether occupied or not. However, an adjustment may be made for the unoccupied units of a newly constructed multiple structure for a period of 6 months from the date of first occupancy. The owner is responsible for providing written information and facilitating City's inspection.

(c-iii) Commercial and Industrial. Rate shall be based on the size of the service line and quantity used as established in [subsections] "a" and "b" of this [section].

(c-iv) Flat Rate. Residential accounts shall be $8.05 per month. All flat rate accounts having water meters shall be billed as regular metered accounts starting January 1, 1988. [Section 9 (c-iv) amended by Ordinance No. 1975, passed April 13, 1987.]

(d) Fire Sprinkler Connections. $3.00 per diameter inch of service line per month.

(e) Bulk Rate. For first 500 cubic feet, the minimum charge shall be $20.00, including one time turn-on and turn-off of meter and valve device each day at one location. These charges will be doubled for the services necessitated on the week-ends, holidays and after 4:00 p.m. on regular work days. Public Works Department may make estimates for small flows. Summer bulk rate sale shall be limited by the Public Works Department, allowed generally in the early mornings. Public right-of-way construction and other public use may be exempted from the bulk rate charge.

(f) Minimum Charge at Start/Closing. The bills shall be prorated according to the usage, however, the minimum charge shall accrue to the end of the billing period for the services turned off during a billing cycle for nonpayment.

(g) Outside City Limits. A factor of 1.5 shall be applied to all rates and charges for services outside the City.

(h) The monies collected pursuant to the provisions of this section shall be used to pay the costs of operation, maintenance and expansion of the water supply and distribution systems, and related facilities and services, including administrative and engineering costs.

Section 10. Prior Agreements. All prior Council approved service agreements between the City and a customer will remain in force for the term of the agreement. However, the requirements of this ordinance and other applicable ordinances, including the rate increase provisions, must be met. [Section 10 added by Ordinance No. 1933, passed December 11, 1985.]

[Sections 11 through 33 renumbered by Ordinance No. 1933, passed December 11, 1985.]

Section 11. Leak Adjustments. In case of leakage, an adjustment for one billing or a two month period [shall] be made if the leak has been promptly repaired and the request for leak adjustment has been made within 6 months. Such adjustments shall not exceed 100% of the estimated excess flow attributable to the leak. A charge of $10.00 will be made for leak adjustment service after the current flat rate services have been metered.

Section 12. Rate and Fee Increases. Unless otherwise modified by the City Council, all rates and charges detailed in Section 9(a) and 9(d) shall be automatically increased by approximately five and one-half percent (5.5%) effective with the billings for service beginning December 1, 1985, and again by said percentage beginning December 1, 1986. Thereafter, rate adjustments will be established by Council action at a frequency and amount determined to be fiscally responsible to support service obligations. [Section 12 amended by Ordinance No. 1933, passed December 11, 1985.]

Discontinuance of Service

Section 13. Unsafe Apparatus.

(1) The City may refuse to furnish water and may discontinue service to a premises where an apparatus, appliance or other equipment using water is dangerous, unsafe or is being used in violation of laws, ordinances or legal regulations.

(2) The City does not assume liability for inspecting apparatus on the customer's property. The City does reserve the right of inspection, however, if there is reason to believe that unsafe or illegal apparatus is in use.

Section 14. **Service Detrimental to Others**. The City may refuse to furnish water and may discontinue service to premises where excessive demand by one customer will result in inadequate service to others.

Section 15. **Fraud and Abuse**. The City shall have the right to refuse or to discontinue water service to a premises to protect itself against fraud or abuse.

Section 16. **Noncompliance**. The City may discontinue water service to a customer for noncompliance with a City regulation if the customer fails to comply with the regulation within five days after receiving written notice of the City's intention to discontinue service. If such noncompliance affects matters of health or safety or other conditions that warrant such action, the City may discontinue water service immediately.

Section 17. **Water Waste**. Where wasteful or negligent water use seriously affects the general service, the City may discontinue the service if such conditions are not corrected within five days after the customer is given written notice. Knowingly allowing water to leak and not repairing it will constitute water waste.

Section 18. **Abandoned and Nonrevenue-producing Services**. When a service connection to a premises has been abandoned or not used for a period of one year or longer, the City may remove it or the City may start charging the minimum fee. New service shall be placed only upon the customer's applying and paying for a new service connection and water system capacity fee.

Section 19. **Materials Used**. Sizes of meters, pipes and other materials to be used in water connection and installation shall be determined by the City.

General

Section 20. **Pools and Tanks**. When an abnormally large quantity of water is desired for filling a swimming pool, log pond or for other purposes, arrangements shall be made with the City prior to taking such water. Permission to take water in unusual quantities shall be given only if it can be safely delivered and if other customers will not be inconvenienced.

Section 21. **Damage to City Property**. The customer shall be liable for damage to a meter or other equipment or property owned by the City which is caused by an act of the customer, his tenants or agents. The damage shall include the breaking or destruction of seals by the customer on or near a meter and damage to a meter that may result from hot water or steam from a boiler or heater on the customer's premises. The City shall be reimbursed by the customer for such damage promptly on presentation of a bill.

Section 22. **Water Source Development.** No water source development will be made within the City limits without prior approval from the City Engineer.

Section 23. Cross Connections.

(A) Health regulations. Unprotected cross connections between the public water supply and any unapproved source of water are prohibited.

(B) Definition. A cross connection is defined as an interconnection between the utility water supply and any unapproved water supply, or a connection between a water distribution pipe and any fixture installed in such a manner that unsafe water, waste or sewage may be drawn into the utility water system. Cross connections may be divided into two classifications as follows:

(1) Connections in which pure and impure water are separated by gate valves, check valves, or both.

(2) Connections which permit pollution to enter when the pressure in the utility water system falls below atmospheric pressure, thus creating a vacuum. This process of water pollution is known as back siphonage.

(C) Use of private water and City water. Customers desiring to use both a utility water supply and a supply of water other than that furnished by the utility may obtain water at meter rates upon the following conditions and not otherwise. Under no circumstances shall a physical connection, direct or indirect, exist or be made in any manner, even temporarily, between the utility water supply and that of a private water supply. Where such a connection is found to exist, or where provision is made to connect the two systems by means of a spacer or otherwise, the utility water supply shall be shut off from the premises without notice. In case of such discontinuance, service shall not be re-established until satisfactory proof is furnished that the cross connection has been completely and permanently severed.

Section 24. Access to Premises.

(A) The City or its duly authorized agents shall at all reasonable times have the right to enter or leave the customer's premises for any cross connection inspection with the service of water to the premises.

(B) The requirements of State Health Department and other appropriate agencies will provide guidelines to the City to its enforcement responsibility.

Water Conservation

Section 25. Declaration of Emergency. When the Mayor is informed that the City water supply has become, or is about to become, depleted to such an extent as to cause a serious water shortage in the City, the Mayor shall have the authority to declare an emergency water shortage and to direct that the provisions of Section [26] through [30] of this ordinance be enforced.

Section 26. **Notice of Declaration of Emergency**. When a declaration of emergency is pronounced by the Mayor, the City Administrator or his designate shall make the declaration public in a manner reasonably calculated to provide actual notice to the public. This provision shall not be construed as requiring personal delivery or service of notice or notice by mail.

Section 27. **Prohibited Uses of Water**. When a declaration of emergency is pronounced and notice has been given in accordance with Section [25] and [26] above, the use and withdrawal of water by any person for the following purposes shall be prohibited:

(1) Sprinkling, watering or irrigating shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens, vegetables, flowers or any other vegetation.

(2) Washing automobiles, trucks, trailers, trailerhouses, railroad cars or any other type of mobile equipment.

(3) Washing sidewalks, driveways, filling station aprons, porches and other surfaces.

(4) Washing the outside of dwellings; washing the inside or outside of office buildings.

(5) Washing and cleaning any business or industrial equipment and machinery.

(6) Operating any ornamental fountain or other structure making a similar use of water.

(7) Swimming and wading pools not employing a filter and recirculating system.

(8) Permitting the escape of water through defective plumbing.

Section 28. **Exemptions**. At the discretion of the Mayor, one or more of the above uses may be exempted from the provisions of this section. The exemption shall be made public as provided in Section [26] of this ordinance.

Section 29. **Exception to Maintain Sanitation**. The City Administrator shall have the authority to permit a reasonable use of water necessary to maintain adequate health and sanitation standards.

Section 30. **Enforcement.** Department of Public Works will be responsible for the interpretation and administration of this ordinance.

Section 31. **Civil Infraction Assessment.** A violation of any provision of this ordinance constitutes a class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 30 amended by Ordinance No. 2008, passed October 24, 1988.]

Section 32. **Severability**. The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 33. **Repeal**. Ordinance No. 1378, enacted October 8, 1973; Ordinance No. 1595, enacted March 21, 1978; Ordinance No. 1596, enacted March 21, 1978; Ordinance No. 1622, enacted June 27, 1978; and Ordinance No. 1804, enacted January 10, 1983, are repealed.

Passed by the Council April 23, 1984, and approved by the Mayor April 24, 1984.

ORDINANCE NO. 1965

AN ORDINANCE PROVIDING RULES, REGULATIONS, AND ENFORCEMENT FOR THE USE AND SUPPLY OF CITY SANITARY SEWER SERVICE AND WATER SERVICE, REPEALING ORDINANCE NO. 1931, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Deposit Application**. Application for City sanitary sewer and water services, other than connection and meter installation service, shall be by written application on forms provided at the Recorder's Office. Each application for the use of sanitary sewer and water service must specifically designate the property to be served and the owner thereof and must be accompanied by a deposit in the sum of not less than $40.00 or an amount equal to estimated 3 months bill at the discretion of the City. However, any resident of Woodburn (a person who has established credit with the City of Woodburn by having water and/or sewer service in his/her own name) will by allowed to move from one location within the City limits without having to pay a deposit if that resident has lived in Woodburn for at least three (3) years, has had City of Woodburn water and/or sewer service in his/her own name, and has not been delinquent in paying for water and/or sewer service within the past three years.

Section 2. **Deposit Refund**.

(A) A refund of the water and sewer service deposit will occur when a customer shows a satisfactory credit performance for three years. If it becomes necessary to make one or more visits to enforce collection and/or shut-off for non-payment during the three year period, the City shall retain the deposit. The deposit will be held for an additional three years from the date of the last visit to the customer's premise for collection for non-payment of a bill. (Definition of visit - hand delivery of notice of shut-off to the customer's premise. Definition of satisfactory credit - no water shut-off notices hand delivered and /or temporary shut-off service for non-payment during a three-year period).

(B) A refund of the deposit will occur upon the applicant's requesting discontinuance of service provided that all outstanding bills are paid in full. The deposit may be applied to the final bill.

(C) If an account is shut-off for non-payment, the deposit shall be held as security until the outstanding balance is paid. The deposit will only be applied to the outstanding balance when the account is closed and no further water or sewer service is required by the customer. The remaining balance of the deposit not used to pay the outstanding bill will be refunded to the customer.

(D) Upon refund of the cash deposit to the applicant for satisfactory credit performance or upon termination of service, the deposit shall be refunded together with interest thereon at the rate of one-half percent (1/2%) below the average annual interest rate received by the City. However, no interest shall be allowed or paid by the City of Woodburn on deposits which have been deposited with the City for less than 30

days. All cash deposits so paid to the City of Woodburn by water users shall be credited by the Finance Department into a special account to be known as "Water Deposit Trust Account".

Section 3. <u>Disconnect Procedure</u>.

(A) All Charges for sanitary sewer and water service furnished or rendered by the City of Woodburn shall be chargeable to the premises or property where sanitary sewer and water service is supplied and, in addition, all persons signing an application for the use of sanitary sewer and water service shall be personally liable for all charges accrued against the property designated within the application. The City reserves the right to cut off and disconnect sanitary sewer and water service to the premises without further notice when charges for sanitary sewer and water service have not been paid within 30 days after the due date, and the expense thereof shall be borne by the property to which such service has been supplied. The City shall provide 3 to 5 days notice by a door hanger or by mail prior to water service disconnect.

(B) Fees charged for delinquency, disconnection and restoration of sanitary sewer services and water services shall be in accordance with the Master Fee Schedule. After the City water service has been disconnected for non-payment, it shall not be restored until the past due amount and all fees have been paid in full. [Section 3(B) as amended by Ordinance No. 2432 passed March 10, 2008 and effective May 1, 2008.]

(C) The charges for turn-off and/or turn-on for reasons other than non-payment of water bill shall be $10.00. No charge shall be made for water turn-on service for a new customer with a deposit or an established three-year credit, and for the turn-on and/or turn-off services necessitated by an emergency such as waterline or equipment breakage.

(D) A renter or owner shall not be allowed to have City utility services at a new location unless the current billings have been satisfied. The non-delinquent bills after deposit deduction remains with the property.

(E) The disconnect notice shall be sent to the renter as well as the property owner at the time of termination of service for non-payment of bill. It is the property owner's responsibility to inform the City of its ownership. If the City fails to provide notice to the property owner, who has informed the City of its ownership and is on the City's current records, then the said property will not be liable for City's utility charges exceeding 15 working days beyond delinquency. Also, this provision will apply if the City fails to turn-off the water to the premises. Any charges exceeding 15 working days beyond delinquency must be collected from the renter or user of utility services, and failing to do so, the revenues shall be considered uncollectible and deleted from the City resources. The City may charge 1% interest per month on delinquent accounts.

(F) If a property served by City utilities is purchased by a bona fide purchaser with no knowledge of unpaid charges for prior utility service to the same property, the

purchaser of the property shall not be responsible for any of the charges that the former owner fails to pay.

[Section 3F added by Ordinance 2371, passed September 13, 2004.]

Section 4. **Lien Procedure**. Any and all sanitary sewer and water service bills not paid within 45 days after the due date shall be recorded by the City Recorder in the docket of City liens. When so docketed, said sum shall be a lien or charge against the estate and interest of the respective owners and the parties interested in such land which shall have been supplied with sanitary sewer and water service. Said persons shall make payment within 10 days from the time of entering the same in the docket of City liens and, if not so paid, the same shall be deemed delinquent and thereupon shall be collected in the manner provided for the collection of delinquent assessments. In addition to the City's property lien process, the City may use State statutes to collect the sewer bills.

Section 5. **Notice**. Notice to the City of the desire of any person to have the water turned off or at any premises shall be given to the Recorder at least 24 hours before the water is to be so turned on or off. In no event shall any person, other than the duly authorized employees of the City, turn on the supply of City water after the same has been shut off by the City on account of discontinuance of service for any reason whatsoever.

Section 6. **Permit**. No person supplied with sanitary sewer and water service shall be permitted to supply or furnish such services in any way to other persons or premises without a permit from the City Council.

Section 7. **Repairs**. The City reserves the right to shut off water from the mains, without notice, for repairs or other necessary purposes. For normal, routine repairs, the City shall take reasonable precaution to notify occupants of affected premises of the intention to shut off the water supply. In no event shall the City, its officers, employees or agents be responsible for any damage resulting from shutting off the City water supply. Water for steam boilers for power purposes shall not be furnished by direct pressure from the City water main. Owners of steam boilers shall maintain tanks for holding an ample reserve of water.

Section 8. **Alterations**. No person, other than an agent of the City, shall tap the City sanitary sewer or water mains, or make alterations in any conduit, pipe, or other fixture connected therewith, between the main and the property line.

Section 9. **Access**. The City shall have free access to all parts of the building or premises which are served by City sanitary sewer and water service for the purpose of inspecting the pipes and fixtures.

Section 10. **Rates**.

(A) The City Council of the City of Woodburn shall from time to time establish, by ordinance, all rates, surcharges, and connection fees for the use of the City of

Woodburn sanitary sewer and water service. The Public Works Director shall conduct an annual review of rates contained in this ordinance.

(B) Outside City Limits. A factor of 1.5 shall be applied to all rates and charges for service outside the City.

(C) Hardship Relief. Hardship cases may apply for and be granted a monthly charge reduction of 40% to the bill. Hardship may be established by submitting proof of $6,000 or less yearly income. To remain eligible for reduction, the water consumption must not exceed the average, and the City may at its option install a meter for this monitoring.

Section 11. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 3 civil infraction and shall be dealt with in according to the procedures established by Ordinance 1998. [Section 11 as amended by Ordinance No. 2008, passed October 28, 1988.]

Section 12. Severability. The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 13. Repeal. Ordinance No. 1931 is hereby specifically repealed.

Section 14. [Emergency clause.]

Passed by the Council February 9, 1987, and approved by the Mayor February 11, 1987.

ORDINANCE NO. 2070

AN ORDINANCE ESTABLISHING SYSTEM DEVELOPMENT CHARGES FOR WATER AND SEWER.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

(A) "Applicant" shall mean the owner or other person who applies for a building permit, development permit, or connection to the City's water or sewer system.

(B) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

(C) "Building permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "building permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(D) "Capital improvements" shall mean public facilities or assets used for any of the following:

1) Water supply, treatment, storage, and transmission/conveyance;

2) Sewer collection/conveyance, treatment, and disposal; or

[Section 1(D) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.]

(E) "Citizen or other interested person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the City, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section (3) of this ordinance.

(F) "Development" shall mean a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(G) "Development permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(H) "Dwelling unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

(I) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the City to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or owner.

(J) "Improvement fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance.

(K) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(L) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(M) "Qualified public improvement" shall mean a capital improvement that is:

1) Required as a condition of development approval;

2) Identified in the adopted capital improvement plan (CIP); and either

a) not located on or contiguous to property that is the subject of development approval; or

b) located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

[Section 1 (M) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.]

(N) "Reimbursement fee" shall mean a fee for costs associated with capital improvements already constructed or under construction on the effective date of this ordinance.

(O) "System development charge" shall mean a reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. System development

charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development. System development charges do not include connection or hook-up fees that reimburse the City for the average cost of inspecting and installing connections to water and sewer capital improvements.

(P) "System development charge study" shall mean the study adopted pursuant to Section (3)(B), as amended and supplemental pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

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

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

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

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

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either"...or", the conjunction shall be interpreted as follows:

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

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

(3) "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

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

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions.

(A) Development Subject to Charges. System Development Charges are imposed on all development within the city for capital improvements for water and sewer. System Development Charges are imposed on any development outside the city boundary for water and sewer capital improvements, if such development connects to or otherwise uses the city's water or sewer systems. The System Development Charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(Section 3 (A) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(B) Rates of Charges:

(1) For the purpose of setting Water and Sewer System Development Charges, the city hereby adopts and incorporates by reference the study entitled "System Development Charges for Woodburn, Oregon" dated July 29, 1991, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

(Section 3 (B)(1) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(2) System development charges shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit if such alteration, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charge to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.

(3) The City shall, based upon the study referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

(C) Payment of Charges. Except as otherwise provided in this ordinance, applicants for building permits, development permits, or connection to City water or sewer systems shall pay the applicable system development charges prior to the issuance of the permit or connection by the City unless charges are financed pursuant to a City approved installment or deferral program. (Section 3(C) as amended by Ordinance 2457 passed June 22, 2009)

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

(1) In the event an applicant believes that the impact on City capital improvements resulting from his development is less than the fee established in Section

(3)(B), such applicant may submit a calculation of an alternative system development charge to the City Council.

(2) The alternative system development charges rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

(3) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this Section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

(4) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this Section or were not calculated by a generally accepted methodology, then the City Council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

(5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the Council, shall be refunded to the applicant.

(E) Exemptions. The following development shall be exempt from payment of the system development charges:

(1) Alterations, expansion or replacement of an existing dwelling unit where not additional dwelling units are created and no change in use has occurred.

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

(3) The issuance of a permit for a mobile home installation on the property which applicable system development charges have previously been made for
such installation as documented by receipts issued by the City for such prior payment.

(4) Development with vested rights, determined as follows:

(a) Any owner of land which was the subject of a building permit or development permit issued prior to the effective date of this ordinance may petition the City for a vested rights determination which would exempt the landowner from the provisions of this ordinance. Such petition shall be evaluated in writing by the City Attorney and a decision made by the City Council based on the following criteria:

(i) The existence of a valid, unexpired permit issued by the City authorizing the specific development for which a determination is sought;

(ii) Substantial expenditures or obligations made or incurred in reliance upon the authorizing governmental act;

(iii) Other factors that demonstrate it is highly inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirement of this ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:

(aa) Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the system development charges required by this ordinance; and

(bb) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this Ordinance.

(F) Credits for Development Contributions of Qualified Public Improvements. The City shall grant a credit against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the City.

(1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

(a) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and

(b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

(2) Prior to issuance of a building permit, development permit, or connection, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

(a) A designation of the development for which the proposed plan is being submitted;

(b) A legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this Section.

(c) A list of the contemplated capital improvements contained within the plan;

(d) An estimate of proposed construction costs certified by a professional architect or engineer; and

(e) A proposed time schedule for completion of the proposed

(3) The City Administrator shall determine if the proposed qualified public improvement is:

(a) Required as a condition of development approval;

(b)Identified in the adopted capital improvement plan (CIP); and either

i) Not located on or contiguous to property that is the subject of development approval; or

ii) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(Section 3 (F)(3) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(4) Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection, shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by City under this subsection exceed the amount originally paid by the applicant.

(5) In the event the amount of developer contribution determined to be applicable by the City Administrator pursuant to an approved plan of contribution exceeds the total amount of system development charges due by the applicant, the City may execute with the applicant an agreement for future reimbursement of the excess of such contribution credit from future receipts by the City of other system development charges. Such agreement of reimbursement shall be subject to City

Council Approval and not be for a period in excess of five years from the date of completion of the approved plan of contribution and shall provide for a forfeiture of any remaining reimbursement balance at the end of such five year period.

(G) Appeals and Review Hearings.

(1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of any of the following:

(a) A proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

(2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

(3) The request for hearing shall be filed with the City Administrator and shall contain the following:

(a) The name and address of the applicant;

(b) The legal description of the property in question;

(c) If issued, the date the building permit, development permit, or connection was issued;

(d) A brief description of the nature of the development being undertaken pursuant to the building permit, development permit, or connection;

(e) If paid, the date the system development charges were paid; and

(f) A statement of the reasons why the applicant is requesting the hearing.

(4) Upon receipt of such request, the City Administrator shall schedule a hearing before the City Council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.

(5) Such hearing shall be before the City Council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

(6) Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.

(7) An applicant may request a hearing under this Section without paying the applicable system development charges, but no building permit, development permit, or connection shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.

(H) Review of Study and Rates. This ordinance and the system development charges study shall be reviewed at least once every four years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the study adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the City's capital improvements. In the event the review of the ordinance or the study alters or changes the assumptions, conclusions and findings of the study, or alters or changes the assumptions, conclusions and findings of the study, or alters or changes the amount of system development charges, the study adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated studies.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The city hereby establishes a separate trust account for each type of System Development Charge to be designated as the "Water SDC Account" and the "Sewer SDC Account," which shall be maintained separate and apart from all other accounts of the city. All System Development Charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(Section 4 (A) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

(1) Design and construction plan preparation;

(2) Permitting and fees;

(3) Land and materials acquisition, including any costs of acquisition or condemnation;

(4) Construction of improvements and structures;

(5) Design and construction of new drainage facilities required by the construction of capital improvements and structures;

(6) Relocating utilities required by the construction of improvements and structures;

(7) Landscaping;

(8) Construction management and inspection;

(9) Surveying, soils and material testing;

(10) Acquisition of capital equipment;

(11) Repayment of monies transferred or borrowed from any budgetary fund of the City which were used to fund any of the capital improvements as herein provided;

(12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to fund capital improvements;

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

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

(1) Any expenditure that would be classified as a routine maintenance or repair expense; or

(2) Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the City's capital improvement program. The capital improvement program shall:

(1) List the specific capital improvement projects that may be funded with system development charges revenue;

(2) Provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;

(3) Provide the estimated timing of each capital improvement project; and

(4) Be updated at least once every four years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the City. All income derived from such investments shall be deposited in the system development trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

(1) An applicant or owner shall be eligible to apply for a refund if:

a) The building permit, development permit or connection has expired and the development authorized by such permit is not complete; or

b) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

(2) The application for refund shall be filed with the City Administrator and contain the following:

a) The name and address of the applicant;

b) The location of the property which was the subject of the system development charges;

c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

d) The date the system development charges were paid;

e) A copy of the receipt of payment for the system development charges; and, if appropriate;

f) The date the building permit, development permit, or connection was issued and the date of expiration.

(3) The application shall be filed within ninety (90) days of the expiration of the building permit, development permit, or connection, or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

(4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.

(5) A building permit, development permit, or connection which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section (3).

(G) Annual Accounting Reports. The City shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person (as defined in Section (1) (F) may challenge an expenditure of system development charges revenues.

(1) Such challenge shall be submitted, in writing, to the City Administrator for review within two years following the subject expenditure, and shall include the following information:

a) The name and address of the citizen or other interested person challenging the expenditure;

b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

c) The reason why the expenditure is being challenged.

(2) If the City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

(3) The City Administrator shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

Section 5. Severability. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

Passed by the Council September 9, 1991 and approved by the Mayor September 10, 1991.

ORDINANCE NO. 2111

AN ORDINANCE ESTABLISHING A METHODOLOGY FOR TRAFFIC IMPACT FEES (TIF) AND STORMWATER DRAINAGE SYSTEM DEVELOPMENT CHARGES; AND REPEALING ORDINANCE NO. 1842.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "Applicant" shall mean the owner or other person who applies for a building permit or development permit.

(B) "Bancroft Bond" shall mean a bond issued by the city to finance a capital improvement in accordance with ORS 223.205 - 223.295.

(C) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

(D) "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "Building Permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(E) "Capital Improvements" shall mean public facilities or assets used for stormwater drainage.

(Section 1 (E) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

(F) "Citizen or Other Interested Person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the city, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.

(G) "City" shall mean the City of Woodburn, Oregon.

(H) "Credit" shall mean the amount of money by which the TIF or Stormwater Drainage SDC for a specific development may be reduced because of construction of eligible capital facilities as outlined in this ordinance.

(I) "Development" shall mean a building or other land construction, or making a change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(J) "Development Permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(K) "Dwelling Unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

(L) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(M) "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. Notwithstanding anything in this ordinance to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(N) "Off-site" shall mean not located on or contiguous to property that is the subject of development approval.

(O) "On-site" shall mean located on or contiguous to property that is the subject of developmental approval.

(P) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(Q) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(R) "Prime Rate of Interest" shall mean the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as posted in the Wall Street Journal.

(S) "Qualified Public Improvement" shall mean a capital improvement that is:

1) Required as a condition of residential development approval;

2) Identified in the adopted capital improvement plan (CIP); and either

a) not located on or contiguous to property that is the subject of development approval; or

b) located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

(Section 1 (S) as amended by Ordinance 2249 passed November 22, 1999, effective January 1,2000.)

(T) "Right-of-Way" shall mean that portion of land that is dedicated for public use.

(U) "System Development Charge" shall mean an improvement fee assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit or building permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

(V) This subsection was repealed by Ordinance 2249 passed November 22, 1999.

(W) "Traffic Impact Fee and Stormwater Drainage System Development Charge Methodology Report" shall mean the report adopted pursuant to Section (3)(B), as amended and supplemented pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

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

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

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

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

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:

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

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

3) "Either"...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

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

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions:

(A) Development Subject to Charges. System development charges are imposed on all new development within the city for capital improvements for transportation and stormwater drainage. The system development charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(B) Rates of Charges.

1) The city hereby adopts and incorporates by reference the report entitled "City of Woodburn Traffic Impact Fee and Stormwater Drainage System Development Charges Methodology Report", dated June 30, 1993, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

2) System development charges shall be imposed and calculated for the change in use, alternation, expansion or replacement of a building or dwelling unit if such change in use, alternation, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charges to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the change in use, alternation, expansion or replacement.

3) The city shall, based upon the report referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

4) An additional systems development charge may be assessed by the city if the demand placed on the city's capital facilities exceeds the amount initially estimated at the time systems development charges are paid. The additional charge shall be for the increased demand or for the demand abovethe underestimate, and it shall be based upon the fee that is in effect at the time the additional demand impact is determined, and not upon the fee structure that may have been in effect at the time the initial systems development charge was paid. This provision does not apply to single family or other residential units unless additional rental units are created.

(C) Payment of Charges. Applicants for building permits or development permits shall pay the applicable system development charges prior to the issuance of the permits by the city unless charges are financed pursuant to a City approved installment or deferral program.

(Section 3 (C) as amended by Ordinance 2249 passed November 22,1999, effective January 1, 2000 and Ordinance 2457 passed June 22, 2009, effective June 24, 2009.)

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1) In the event an applicant believes that the impact on city capital improvements resulting from a development is less than the fee established in Section (3) (b), the applicant may submit alternative system development charge rate calculations, accompanied by the alternative rate review fee established by resolution for this purpose, to the City Administrator. The city may hire a consultant to review the alternative system development charge rate calculations, and may pay the consulting fees from system development charges revenues.

2) The alternative system development charge rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

4) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this section or were not calculated by a generally accepted methodology, then the city council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the city council, shall be refunded to the applicant.

(E) Exemptions. The following development shall be exempt from payment of the system development charges:

1) Alternations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the city's capital improvements.

3) The issuance of a permit for a mobile home on which applicable system development charges have previously been made as documented by receipts issued by the city for such prior payment.

4) Development with vested right, determined as follows:

a) Any owner of land which was the subject of a building permit or development permit issued prior to the effective date of this ordinance may petition the city for a vested rights determination which would exempt the landowner from the provision of this ordinance. Such petition shall be evaluated by the City Attorney and a decision made by the city council based on the following criteria:

i) The existence of a valid, unexpired permit issued by the city authorizing the specific development for which a determination is sought;

ii) Substantial expenditures or obligations made or incurred in reliance upon the authorizing governmental act;

iii) Other factors that demonstrate it is highly inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirements of this ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:

aa) Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the system development charges required by this ordinance; and

bb) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this ordinance.

(F) Credits for Developer Contributions of Qualified Public Improvements. The city shall grant a credit, not to exceed 100% of the applicable TIF or SDC, against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the city.

1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

a) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and

b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

2) Prior to issuance of a building permit or development permit, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

a) a designation of the development for which the proposed plan is being submitted.

b) a legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this section;

c) a list of the contemplated capital improvements contained within the plan;

d) an estimate of proposed construction costs certified by a professional architect or engineer; and

e) a proposed time schedule for completion of the proposed plan.

3) The City Administrator shall determine if the proposed qualified public improvement is:

a) Required as a condition of development approval;

b) Identified in the adopted capital improvement plan (CIP); and either

i) Not located on or contiguous to property that is the subject of development approval; or

ii) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built large or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

c) Not located on or contiguous to property that is the subject of residential development approval.

4) The decision of the City Administrator as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15) working days of the review. A copy shall be provided to the applicant.

5) A proposed improvement which does not meet all three (3) of the criteria included in Section 3(F)(3) above shall not be considered a qualified public improvement and the city is not required under ORS 223.297 - 223.314 to provide a credit for such an improvement. However, the city shall grant a credit, in an amount not to exceed fifty percent (50%) of the total amount of the applicable SDC, for certain other contributions of capital facilities under the following conditions:

a) The capital facilities being contributed must exceed the local stormwater drainage capacity (for SDC) required for the specific type of development (i.e., residential, industrial, etc.); and

b) Only the value of the contribution which exceeds the local stormwater drainage capacity (for SDC) required for the specific type of development (i.e., residential, industrial, etc.) shall be considered when calculating the credit; and

c) Donations for on-site right-of-way are not eligible for the credit.

(Section 3(F)(5) as amended by Ordinance 2259 passed November 22, 1999, effective January 1,2000.)

6) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit or development permit, shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by city under this subsection exceed the amount originally paid by the applicant.

(G) <u>Appeals and Review Hearings</u>.

1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of a proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

(Section 3 (G)(1) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

3) The request for hearing shall be filed with the City Administrator and shall contain the following:

a) The name and address of the applicant;

b) The legal description of the property in question;

c) If issued, the date the building permit or development permit was issued;

d) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;

e) If paid, the date the system development charges were paid; and

f) A statement of the reasons why the applicant is requesting the hearing.

4) Upon receipt of such request, the City Administrator shall schedule a hearing before the city council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.

5) Such hearing shall be before the city council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

6) Any applicant who requests a hearing pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not construed as a waiver of any review rights.

7) An applicant may request a hearing under this section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

(H) Review of Study and Rates. This ordinance and the Traffic Impact Fee and Stormwater Drainage System Development Charge Methodology Report shall be reviewed at least once every five (5) years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the report adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the city's capital improvements. In the event the review of the ordinance or the report alters or changes the assumptions, conclusions and findings of the report, or alters or changes the amount of system development charges, the report adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated reports.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The City hereby establishes a separate trust account for each type of system development charge to be designated as the "Stormwater SDC", which shall be maintained separate and apart from all other accounts of the city. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(Section 4(A) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

1) design and construction plan preparation;

2) permitting and fees;

3) land and materials acquisition, including any costs of acquisition or condemnation;

4) construction of improvements and structures;

5) design and construction of new drainage facilities required by the construction of capital improvements and structures;

6) relocating utilities required by the construction of improvements and structures;

7) landscaping;

8) construction management and inspection;

9) surveying, soils and material testing;

10) acquisition of capital equipment;

11) repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;

12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund capital improvements;

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

14) consulting costs for the review of alternative rates as provided for in Section (3)(D) of this ordinance.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

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

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

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the city's capital improvement program. The capital improvement program shall:

1) list the specific capital improvement projects that may be funded with system development charges revenues;

2) provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;

3) provide the estimated timing of each capital improvement project; and

4) be updated at least once every five (5) years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

1) An applicant or owner shall be eligible to apply for a full or partial refund if:

a) The building permit or development permit has expired and the development authorized by such permit is not complete;

b) An error was made in calculating the amount of the system development charges resulting in overpayment, and the error is discovered within three months of the date the SDC was paid. The amount of the refund will be limited to the amount collected in excess of the appropriate SDC.

c) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

2) The application for refund shall be filed with the City Administrator and contain the following:

a) The name and address of the applicant;

b) The location of the property which was the subject of the system development charges;

c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

d) The date the system development charges were paid;

e) A copy of the receipt of payment for the system development charges; and, if appropriate,

f) The date the building permit or development permit was issued and the date of expiration.

3) The application shall be filed within ninety (90) days of the expiration of the building permit or development permit or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.

5) Refunds will not be granted based on a change in use of the property which results in a reduced impact on the city's capital facilities.

6) A building permit or development permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section (3).

(G) Annual Accounting Reports. The city shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person may challenge an expenditure of system development charges revenues.

1) Such challenge shall be submitted, in writing, to the City Administrator for review within two years following the subject expenditure, and shall include the following information:

a) The name and address of the citizen or other interested person challenging the expenditure;

b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

c) The reason why the expenditure is being challenged.

2) If the City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

3) The City Administrator shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review with ten (10) days of completion of the review.

Section 5. Severability. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 6. Repeal. Ordinance No. 1842 shall be repealed at 11:59 p.m. on December 31, 1993.

Passed by the Council September 13, 1993 and approved by the Mayor September 16, 1993.

ORDINANCE NO. 2250

AN ORDINANCE ESTABLISHING A METHODOLOGY FOR PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGES; AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "Applicant" shall mean the owner or other person who applies for a building permit or development permit.

(B) "Bancroft Bond" shall mean a bond issued by the city to finance a capital improvement in accordance with ORS 223.205 - 223.295.

(C) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

(D) "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "Building Permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(E) "Capital Improvements" shall mean public facilities or assets used for Parks and Recreation.

(F) "Citizen or Other Interested Person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the city, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.

(G) "City" shall mean the City of Woodburn, Oregon.

(H) "Credit" shall mean the amount of money by which the SDC for a specific development may be reduced because of construction of eligible capital facilities as outlined in this ordinance.

(I) "Development" shall mean a building or other land construction, or **making a change in the use** of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(J) "Development Permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(K) "Dwelling Unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

(L) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(M) "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. Notwithstanding anything in this ordinance to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(N) "Off-site" shall mean not located on or contiguous to property that is the subject of development approval.

(O) "On-site" shall mean located on or contiguous to property that is the subject of developmental approval.

(P) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(Q) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(R) "Prime Rate of Interest" shall mean the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as posted in the Wall Street Journal.

(S) "Qualified Public Improvement" shall mean a capital improvement that is:

1) Required as a condition of development approval;

2) Identified in the adopted capital improvement plan (CIP);and either

3) a) Not located on or contiguous to property that is the subject of development approval; or

b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

(T) "Right-of-Way" shall mean that portion of land that is dedicated for public use.

(U) "System Development Charge" shall mean an improvement fee assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit or building permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

(V) "Parks and Recreation System Development Charges Executive Summary, Methodology, and Rate Study Update" shall mean the report adopted pursuant to Section (3)(B), as amended and supplemented pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

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

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

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

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

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:

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

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

3) "Either"...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

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

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions:

(A) Development Subject to Charges. System development charges are imposed on all new development within the city for capital improvements for transportation . The system development charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(B) Rates of Charges.

1) The city hereby adopts and incorporates by reference the report entitled "Parks and Recreation Systems Development Charges Executive Summary, Methodology, and Rate Study Update" dated September 30, 1999, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

2) System development charges shall be imposed and calculated for the change in use, alternation, expansion or replacement of a building or dwelling unit if such change in use, alternation, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charges to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the change in use, alternation, expansion or replacement.

3) The city shall, based upon the report referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

4) An additional systems development charge may be assessed by the city if the demand placed on the city's capital facilities exceeds the amount initially estimated at the time systems development charges are paid. The additional charge shall be for the increased demand or for the demand above the underestimate, and it shall be based upon the fee that is in effect at the time the additional demand impact is determined, and not upon the fee structure that may have been in effect at the time the initial systems development charge was paid. This provision does not apply to single family or other residential units unless additional rental units are created.

5) Notwithstanding any other provision, the SDC rates adopted pursuant to this ordinance may on January 1st of each year, after the first year that the ordinance is effective, be adjusted by the City Administrator to account for changes in the costs of acquiring and constructing facilities. The adjustment factor shall be based on the change in average market value of all land in the city, according to the records of the County Tax Assessor, and the change in construction costs according to the engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index; and shall be determined as follows:

Change in Average Market Value X 0.50
+ Change in Construction Cost Index X 0.50
= System Development Charge Adjustment Factor

The System Development Charge Adjustment Factor shall be used to adjust the System Development Charge rates, unless they are otherwise adjusted by action of the City Council based on adoption of an updated methodology or capital improvements plan (master plan).

(C) Payment of Charges. Applicants for building permits or development permits shall pay the applicable system development charges prior to the issuance of the permits by the city unless charges are financed pursuant to a City approved installment or deferral program.

(Section 3 (C) as amended by Ordinance 2457 passed June 22, 2009, effective June 24, 2009.)

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1) In the event an applicant believes that the impact on city capital improvements resulting from a development is less than the fee established in Section (3) (B), the applicant may submit alternative system development charge rate calculations, accompanied by the alternative rate review fee established by resolution for this purpose, to the City Administrator. The city may hire a consultant to review the alternative system development charge rate calculations, and may pay the consulting fees from system development charges revenues.

2) The alternative system development charge rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this section by using a generally

accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

4) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this section or were not calculated by a generally accepted methodology, then the city council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the city council, shall be refunded to the applicant.

E) Exemptions. The following development shall be exempt from payment of the system development charges:

1) Alternations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the city's capital improvements.

3) The issuance of a permit for a mobile home on which applicable system development charges have previously been made as documented by receipts issued by the city for such prior payment.

(F) Credits for Developer Contributions of Qualified Public Improvements. The city shall grant a credit, not to exceed 100% of the applicable Parks and Recreation SDC, against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the city.

1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

a) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and

b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

2) Prior to issuance of a building permit or development permit, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

a) a designation of the development for which the proposed plan is being submitted.

b) a legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this section;

c) a list of the contemplated capital improvements contained within the plan;

d) an estimate of proposed construction costs certified by a professional architect or engineer; and

e) a proposed time schedule for completion of the proposed plan.

3) The City Administrator shall determine if the proposed qualified public improvement is:

a) Required as a condition of development approval;

b) Identified in the adopted capital improvement plan (CIP);and either

c) i) Not located on or contiguous to property that is the subject of development approval; or

ii) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

4) The decision of the City Administrator as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15) working days of the review. A copy shall be provided to the applicant.

5) A proposed improvement which does not meet all three (3) of the criteria included in Section 3(F)(3) above shall not be considered a qualified public improvement and the city is not required ORS 223.297 - 223.314 to provide a credit for such an improvement. However, the city shall grant a credit, in an amount not to exceed fifty percent (50%) of the total amount of the applicable Parks and Recreation SDC, for certain other contributions of capital facilities under the following conditions:

a) The capital facilities being contributed must exceed the city standard required for the specific type of development (i.e., residential, industrial, etc.); and

b) Only the value of the contribution which exceeds the city standard required for the specific type of development (i.e., residential, industrial, etc.) shall be considered when calculating the credit; and

6) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit or development permit, shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by city under this subsection exceed the amount originally paid by the applicant.

(G) Appeals and Review Hearings.

1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of a proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

3) The request for hearing shall be filed with the City Administrator and shall contain the following:

a) The name and address of the applicant;

b) The legal description of the property in question;

c) If issued, the date the building permit or development permit was issued;

d) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;

e) If paid, the date the system development charges were paid; and

f) A statement of the reasons why the applicant is requesting the hearing.

4) Upon receipt of such request, the City Administrator shall schedule a hearing before the city council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the

applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.

5) Such hearing shall be before the city council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

6) Any applicant who requests a hearing pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not construed as a waiver of any review rights.

7) An applicant may request a hearing under this section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

(H) Review of Study and Rates. This ordinance and the Parks and Recreation System Development Charges Executive Summary, Methodology, and Rate Study shall be reviewed at least once every five (5) years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the report adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the city's capital improvements. In the event the review of the ordinance or the report alters or changes the assumptions, conclusions and findings of the report, or alters or changes the amount of system development charges, the report adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated reports.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The City hereby establishes a separate trust account for each type of system development charge to be designated as the "Parks and Recreation SDC" which shall be maintained separate and apart from all other accounts of the city. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

1) design and construction plan preparation;

2) permitting and fees;

3) land and materials acquisition, including any costs of acquisition or condemnation;

4) construction of improvements and structures;

5) design and construction of new drainage facilities required by the construction of capital improvements and structures;

6) relocating utilities required by the construction of improvements and structures;

7) landscaping;

8) construction management and inspection;

9) surveying, soils and material testing;

10) acquisition of capital equipment;

11) repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;

12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund capital improvements;

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

14) consulting costs for the review of alternative rates as provided for in Section (3)(D) of this ordinance.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

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

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

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with

system development charges revenue shall be included in the city's capital improvement program. The capital improvement program shall:

1) list the specific capital improvement projects that may be funded with system development charges revenues;

2) provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;

3) provide the estimated timing of each capital improvement project; and

4) be updated at least once every five (5) years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

1) An applicant or owner shall be eligible to apply for a full or partial refund if:

a) The building permit or development permit has expired and the development authorized by such permit is not complete;

b) An error was made in calculating the amount of the system development charges resulting in overpayment, and the error is discovered within three months of the date the SDC was paid. The amount of the refund will be limited to the amount collected in excess of the appropriate SDC.

c) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

2) The application for refund shall be filed with the City Administrator and contain the following:

a) The name and address of the applicant;

b) The location of the property which was the subject of the system development charges;

c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

d) The date the system development charges were paid;

e) A copy of the receipt of payment for the system development charges; and, if appropriate,

f) The date the building permit or development permit was issued and the date of expiration.

3) The application shall be filed within ninety (90) days of the expiration of the building permit or development permit or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.

5) Refunds will not be granted based on a change in use of the property which results in a reduced impact on the city's capital facilities.

6) A building permit or development permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section (3).

(G) Annual Accounting Reports. The city shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person may challenge an expenditure of system development charges revenues.

1) Such challenge shall be submitted, in writing, to the City Administrator for review within two years following the subject expenditure, and shall include the following information:

a) The name and address of the citizen or other interested person challenging the expenditure;

b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

c) The reason why the expenditure is being challenged.

2) If the City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

3) The City Administrator shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review with ten (10) days of completion of the review.

Section 5. **Severability**. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 6. **Effective Date.** This ordinance shall be legally effective on January 1, 2000.

Passed by the Council and approved by the Mayor November 23, 1999.

ORDINANCE NO. 2405

AN ORDINANCE ESTABLISHING POLICY FOR THE PROVISION OF MUNICIPAL SEWER AND WATER SERVICE TO PROPERTIES LOCATED OUTSIDE CITY BOUNDARIES.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Municipal water and/or sewer service will not be provided to properties located outside City boundaries except as provided in this Ordinance.

Section 2. Property outside City boundaries that is not currently provided water and/or sewer service by the City may obtain a connection to municipal water and/or sewer service only if the property is first annexed into the City.

Section 3. Property outside City boundaries that is currently provided water and/or sewer service by the City shall continue to receive such service unless any of the following events occur:

A. Municipal water and/or sewer use on the property ceases for a continuous period of at least six (6) months; or

B. A change in use; or

C. A change in operations resulting in a material increase in the use of water and/or sewer service; or

D. A change in ownership or title to the property

Section 4. Municipal water and/or sewer service will not be discontinued until notice and an opportunity for a hearing have been given to the occupant and to the owner of record of the involved property. The notice shall be personally served or mailed by certified mail and shall state that thirty (30) days after the date of which the notice is given, service to the property will be discontinued. The notice shall also state that, before such date, a hearing may be requested on the matter, in which case service will not be discontinued until after the hearing is held. If a hearing is requested, a hearing date shall be set and all interested parties shall have the opportunity to address the City Council on the discontinuance of municipal water and/or sewer service. The City Council will then decide whether service shall be discontinued.

Section 5. Notwithstanding Section 2 above and consistent with state law, the City has the power and authority to provide municipal water and /or sewer service to property outside the corporate City boundaries in instances where an emergency is declared by the City Council and it makes a policy determination in a specific instance that it is in the interests of the City to provide these services. (As amended by Ordinance 2459, July 30, 2009)

Passed by the Council July 10, 2006 and approved by the Mayor July 12, 2006.

ORDINANCE NO. 2416

AN ORDINANCE PROVIDING A PROCESS FOR THE FORCED CONVERSION OF ELECTRIC AND COMMUNICATION FACILITIES UNDER THE AUTHORITY DELEGATED BY THE STATE OF OREGON

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. Whenever in this Ordinance the words or phrases defined in this Ordinance are used, they shall have the respective meanings assigned to them in the following definitions:

A. "Commission" means the Public Utility Commission of the State of Oregon.

B. "Underground utility district" or "district" means that area in the City within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of this Ordinance.

C. "Person" means and includes individuals, firms, corporations, and partnerships, and their agents and employees.

D. "Poles, overhead wires, and associated overhead structures" mean poles, towers, supports, wires, conductors, guys, stubs, platforms, cross arms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments, and appurtenances located aboveground within a district and used or useful in supplying electric, communication, or similar or associated service.

E. "Utility" or "utilities" mean all energy utilities and large telecommunications utilities as defined by OAR 860-022-0001.

Section 2. Public Hearing. The City Council may from time to time call public hearings to ascertain whether the public necessity, health, safety, or welfare requires the removal of poles, overhead wires, and associated overhead structures within designated areas of the City and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. The City Administrator shall notify all affected property owners, as shown on the last equalized assessment roll, and the involved utilities, by mail of the date, time, and place of such hearings at least ten days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard.

Section 3. **Designation of Underground Utility Districts by Resolution**. If, after any such public hearing, the City Council finds that the public necessity, health, safety, or welfare requires such removal and such underground installation within a designated area, the City Council may, by resolution, declare such designated area an underground utility district and order such removal and underground installation. Such resolution shall include a description of the area comprising such district and shall fix the date by which such removal and underground installation shall be accomplished and within which affected property owners shall be ready to receive underground service. A reasonable time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials, and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby. The decision of the City Council as set forth in the resolution shall be final and conclusive.

Section 4. **Unlawful Acts.** Whenever the City Council creates an underground utility district and orders the removal of poles, overhead wires, and associated overhead structures therein as provided in this Ordinance, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ, or operate poles, overhead wires, and associated overhead structures in the district after the date when such overhead facilities are required to be removed by such resolution, except as such overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in this Ordinance.

Section 5. **Emergency or Unusual Circumstances.** Notwithstanding the provisions of this Ordinance, overhead facilities may be installed and maintained for a period, not to exceed 10 days, without authority of the City Administrator, in order to provide utilities in the event of an emergency or unusual circumstances. The City Administrator may, under such emergency or unusual circumstances, extend or grant special permission, on such terms as the City Administrator may deem appropriate, without discrimination as to any person or utility, to erect, construct, install, maintain, use, or operate poles, overhead wires, and associated overhead structures on a temporary or permanent basis. Any such decisions by the City Administrator shall be subject to appeal to the City Council by filing a written notice of appeal with the office of the City Administrator within 10 days after the City Administrator's decision is mailed.

Section 6. **Exceptions.** The provisions of this Ordinance and any resolution adopted pursuant to the provisions of this Ordinance shall, unless otherwise provided in such resolution, not apply to the following types of facilities:

A. Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Administrator;

B. Poles or fixtures and other appurtenances used exclusively for street lighting;

C. Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, where such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;

D. Poles, overhead wires, and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 35,000 volts;

E. Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;

F. Antennae, associated equipment, and supporting structures used by a utility for furnishing communication services;

G. Equipment appurtenant to underground facilities, such as pad mounted switches, surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts; and

H. Temporary poles, overhead wires, and associated overhead structures used or to be used in conjunction with construction projects.

Section 7. Notices to Property Owners and Utilities. Within 10 days after the effective date of a resolution adopted pursuant to this Ordinance, the City Administrator shall notify all affected utilities and all persons owning real property within the district created by such resolution of the adoption thereof. The City Administrator shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication, or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location, subject to the applicable rules, regulations, and tariffs of the respective utility or utilities on file with the Commission. Notification by the City Administrator shall be made by mailing a copy of the resolution adopted pursuant to this Ordinance to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

Section 8. Responsibility of Utility Companies. If utility poles, overhead wires, and associated overhead structures must be removed and replaced with underground facilities and equipment in order to continue utility service within a district created by any resolution adopted pursuant to this Ordinance, the supplying utility shall, at its cost, perform such conversion in accordance with its applicable rules, regulations, and tariffs on file with the Commission.

Section 9. Responsibility of Property Owners.

A. Every person owning, operating, leasing, occupying, or renting a building or structures within a district shall perform construction and provide that portion of the service connection on their property between the facilities referred to in this Ordinance and the termination facility on or within such building or structure being served, all in accordance with the applicable rules, regulations, and tariffs of the respective utility or utilities on file with the Commission.

B. In the event any person owning, operating, leasing, occupying, or renting such property does not comply with the provisions of this Ordinance within the time provided for in the resolution enacted pursuant to this Ordinance, the City Administrator shall post written notice on the property being served and thirty days thereafter shall have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to such property. A decision by the City Administrator to order the disconnection and removal of overhead service shall be subject to appeal to the City Council by filing a written notice of appeal with the office of the City Administrator within ten days of the posting of such written notice.

Section 10. Responsibility of City. The City shall remove, at its own expense, all City-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to this Ordinance.

Section 11. Penalties.

A. Abatement. Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to this Ordinance is unlawful and a public nuisance, and may be abated.

B. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the City to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings.

C. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class 1 Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction ordinance.

D. Separate Infractions. Each violation of this Ordinance constitutes a separate Civil Infraction, and each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

E. Remedies – Cumulative. The remedies provided for in this Section are cumulative and not mutually exclusive.

Section 12. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Passed by the Council July 10, 2006 and approved by the Mayor March 12, 2007.

ORDINANCE NO. 2438

AN ORDINANCE IMPOSING TRANSPORTATION SYSTEM DEVELOPMENT CHARGES BASED UPON AN ESTABLISHED METHODOLOGY; PROVIDING PROCESSES FOR ALTERNATIVE CALCULATIONS; AND REQUIRING THAT FUNDS BE ACCOUNTED FOR AND USED PURSUANT TO STATE LAW; AND REPEALING ORDINANCE 2248

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. General Findings. The City Council makes the following General Findings regarding Transportation SDCs.

A. Development within the City contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements.

B. Development should pay its fair share for the cost of these improvements and additions to transportation facilities necessary to accommodate the capacity needs created by growth.

C. ORS 223.297 *et. seq.* grants to the City the authority to impose Transportation SDCs to equitably spread the costs of essential capacity increasing Capital Improvements.

D. Transportation SDCs are incurred upon application to develop property for a specific use or at a specific density and are collected by the City when a building permit is issued. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge.

E. Transportation SDCs are separate from other fees provided by law or imposed as a condition of development.

F. Transportation SDCs are fees for service because they contemplate a development's receipt of transportation services based upon the nature of that development.

G. Transportation SDCs are imposed by this Ordinance not as a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI, Section 11b of the Oregon Constitution or legislation implementing that section.

Section 2. Findings for Interchange Development Charge. The City Council makes the following Findings regarding the IDC:

A. In 2005, the cost of the needed improvements to the Woodburn Interchange was estimated to be $50 million.

B. Pursuant to Intergovernmental Agreement No. 23,240, which serves as a funding plan for completion of the Woodburn Interchange modernization, the City must provide a total of $8 million towards completion of this project.

C. The IDC is established under this Ordinance under the authority of ORS 223.297-223.314.

D. The City Council finds that developing properties within the IDC boundary will create a greater impact on the Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

E. The City Council finds that developing properties within the IDC boundary will receive greater benefit by an improved Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

F. Based upon their greater developmental impact on the Woodburn Interchange and the greater benefit that they will receive when the Woodburn Interchange is improved, the City Council, consistent with ORS 223.297-223.314, makes the determination that it is fair and equitable to impose the IDC.

G. The IDC is an "improvement fee" as defined in ORS 223.299 since the charge to the developer is for costs associated with Capital Improvements yet to be constructed.

H. An argument was raised before the City Council that the IDC is unlawful because it "represents the effective establishment of a transportation special district without undergoing the adoption methods required by ORS Chapter 267.510 *et seq*." The City Council finds that this argument is not well founded in law because the City is asserting no jurisdictional authority outside of its corporate boundary.

I. Pursuant to ORS Chapter 267.510 *et seq* , a transportation district , like other special districts, exercises jurisdictional authority within the area of its boundary. By establishing the IDC boundary, the City Council, consistent with ORS 223.297-223.314, is merely establishing a charge that is collectible within the City. A Transportation SDC must be paid only: (1) if the involved property is annexed to the City, and (2) if the involved property develops. This is legal and within the City's jurisdiction.

J. Another argument was raised before the City Council that the IDC charge is inequitable. As stated above, the City Council finds that this is not the case because developing properties within the IDC boundary will create a greater developmental impact and also will receive a greater benefit by an improved Woodburn Interchange.

K. Finally, an argument was raised before the City Council that the IDC charge violates constitutional principles. The City Council finds that this argument is also not well founded in law. In *Roger's Machinery v. Washington County*, 181 Or.App 369, 45 P.3d 966 (2002), the Court addressed the argument that traffic impact fees imposed under ORS 223.297-223.314 constituted an unconstitutional taking in violation of the Fifth

Amendment. The Court ruled that the traffic impact fees were not physical exactions and were not subject to *Dolan's* heightened scrutiny test, which is used to determine whether a property development condition constitutes an improper taking under the Fifth Amendment. The Court stated that no individualized determination was required before assessing the fee against a particular property in compliance with the Oregon SDC statutes.

Section 3 **Definitions.** The following definitions apply:

A. APPLICANT. A person seeking to obtain a Building Permit or to develop property within the City.

B. BUILDING. Any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a Building Permit.

C. BUILDING PERMIT. A permit issued by the Building Department for the construction, alteration, repair or placement of any Building under the state building code.

D. CAPITAL IMPROVEMENT PLAN. A plan prepared by the City pursuant to ORS 223.309.

E. CAPITAL IMPROVEMENTS. Public facilities or assets used for transportation.

F. CITY. The City of Woodburn, Oregon.

G. CREDIT. The amount of money by which the charge for a specific development may be reduced because of construction of eligible capital facilities as outlined in this Ordinance.

H. DEVELOPMENT. Any man-made change to improved or unimproved real estate which has the effect of generating additional weekday or weekend trips.

I. DIRECTOR. The Woodburn Public Works Director or designee.

J. DWELLING UNIT. A Building or a portion of a Building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

K. IMPROVEMENT FEE. A fee for costs associated with Capital Improvements to be constructed after the date the fee is adopted pursuant to this Ordinance.

L. INTERESTED PERSON. Any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the City, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of charges under this Ordinance.

M. OWNER. The owner or owners of record title or the purchaser or purchasers under a recorded land sale agreement.

N. PERSON. Any natural person, firm, partnership, association or corporation.

O. QUALIFIED PUBLIC IMPROVEMENT. A Capital Improvement that is:

1. Required as a condition of development approval;

2. Identified in the Capital Improvement Plan and is either:

a. Not located on or contiguous to property that is the subject of development approval; or

b. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

P. REIMBURSEMENT FEE. A fee for costs associated with Capital Improvements already constructed or under construction when the fee is adopted pursuant to this Ordinance for which the City determines that capacity exists.

Q. TRANSPORTATION SYSTEM DEVELOPMENT CHARGE ("Transportation SDC") or SYSTEM DEVELOPMENT CHARGE ("SDC"). An improvement fee and/or a reimbursement fee and/or the IDC assessed or collected at the time of increased usage of a Capital Improvement or issuance of a Building Permit. System Development Charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

Section 4. <u>Imposition of Transportation System Development Charges</u>.

A. Unless otherwise exempted by this Ordinance or state law, a Transportation SDC is hereby imposed on all Development within the City.

B. Unless otherwise exempted by this Ordinance or state law, an Interchange Development Charge is hereby imposed on all Development within the City and located within the Interchange Development Charge boundary. The Interchange Development Charge boundary is depicted on Exhibit B, which is attached to this Ordinance and incorporated.

Section 5. <u>Methodology</u>.

A. The methodology used to calculate Transportation System Development Charges and the Interchange Development Charge is set forth in the "Transportation System Development Charge Study" ("the Methodology") dated March 2008, which is attached as Exhibit "A" to this Ordinance and incorporated.

Section 6. System Development Charge Rate Schedule.

A. A Rate Schedule for Transportation System Development Charges and the Interchange Development Charge shall be adopted by resolution based on the Methodology attached as Exhibit "A" and incorporated into this Ordinance.

B. The Rate Schedule may on January 1st of each year, after the first year that the resolution adopting it is effective, be adjusted by the Director to account for changes in the costs of acquiring and constructing facilities. The adjustment factor shall be based on the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index.

Section 7. Collection.

A. System Development Charges are due and payable at the time that the City issues the Building Permit unless charges are financed pursuant to a City approved installment or deferral program. (Section 7 (A) as amended by Ordinance 2457 passed June 22, 2009.)

Section 8. Exemptions.

A. The following development is exempt from System Development Charges:

1. Remodeling or replacement of any single family structure, including mobile homes.

2. Multifamily structure remodeling or replacement if no additional Dwelling Units are added.

3. Remodeling or replacement of office, business and commercial, industrial or institutional structures if such remodeling or replacement does not result in additional peak hour trips.

Section 9. Credits for Qualified Public Improvements.

A. The City shall grant a credit, not to exceed 100% of the applicable System Development Charges for the construction of any Qualified Public Improvements.

B. Prior to issuance of a Building Permit, the Applicant shall submit to the Director a proposed plan and estimate of cost for contributions of Qualified Public Improvements. The proposed plan and estimate shall include:

1. A designation of the Development for which the proposed plan is being submitted.

2. A list of the contemplated Capital Improvements contained within the plan;

3. An estimate of proposed construction costs certified by a professional architect or engineer; and

4. A proposed time schedule for completion of the proposed plan.

C. The Director shall determine if the proposed Qualified Public Improvement is:

1. Required as a condition of development approval;

2. Identified in the Capital Improvement Plan and is either:

a. Not located on or contiguous to property that is the subject of development approval; or

b. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

D. The decision of the Director as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued by the Director within 30 days after the Applicant submits the proposed plan.

E. Any Applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a Building Permit, shall pay the applicable System Development Charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the Director, shall be refunded to the Applicant. In no event shall a refund by City under this subsection exceed the amount originally paid by the Applicant.

Section 10. <u>Alternative Calculation for SDC Rate, Credit or Exemption</u>.

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

1. The Applicant believes the number of vehicle trips resulting from the development is, or will be, less than the number of trips established in the Methodology, and for that reason the Applicant's SDC should be lower than that calculated by the City.

2. The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit.

3. The Applicant believes the City improperly rejected a request for an exemption for which the Applicant believes it is eligible.

B. Alternative SDC Rate Request:

1. If an Applicant believes the number of trips resulting from the Development is less than the number of trips established in the Methodology, the Applicant must request an alternative SDC rate calculation, under this Section, within 90 days after Building Permit issuance for the Development. The City shall not consider such a request filed after 90 days after Building Permit issuance for the Development. Upon the timely request for an alternative SDC rate calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC rate request, the Applicant must provide complete and detailed documentation, including verifiable trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in the City methodology does not accurately reflect the Development's impact on the City's Capital Improvements

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

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

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

c. The proposed alternative SDC rate better or more realistically reflects the actual traffic impact of the Development than the rate set forth in the Methodology.

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

C. Alternative SDC Credit Request:

1. If an Applicant has requested an SDC Credit and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this Section. Any request for an Alternative SDC Credit calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Credit calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

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

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

a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and

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

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

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

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under this Ordinance, and that request has been denied, the Applicant may request an Alternative SDC Exemption under this Section. Any request for an Alternative SDC Exemption calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Exemption, the Director shall review the Applicant's request and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements under this Ordinance for exemptions.

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

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

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

Section 11. <u>Review of Methodology and Rates</u>.

A. This Ordinance and the Methodology shall be reviewed at least once every five (5) years. The purpose of this review is to evaluate and revise, if necessary, the rates of the System Development Charges to assure that they do not exceed the reasonably anticipated costs of the City's Capital Improvements.

Section 12. <u>Authorized Expenditure of System Development Charges</u>.

A. Reimbursement fees may be spent only on capital improvements associated with the systems for which the fees are assessed including expenditures relating to repayment of indebtedness.

B. Improvement fees may be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

C. System development charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements or for the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

D. Any capital improvement being funded wholly or in part with system development charge revenues must be included in the Capital Improvement Plan.

E. System Development Charge revenues may be expended on the costs of complying with the provisions of ORS 223.297-223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 13. Deposit of System Development Charge Revenues; Annual Accounting.

A. System development charge revenues must be deposited in accounts designated for such moneys. The City shall provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.

B. The annual accounting shall include:

1. A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and

2. The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297-223.314, as described in ORS 223.307.

Section 14. Challenge of Expenditures. In accordance with ORS 223.302, any interested person may challenge an expenditure of SDC revenues.

A. Such challenge shall be submitted, in writing, to the Director for review within two years following the subject expenditure, and shall include the following information:

1. The name and address of the interested person challenging the expenditure;

2. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

3. The reason why the expenditure is being challenged.

B. If the Director determines that the expenditure was not made in accordance with the provisions of this Ordinance and other relevant laws, a reimbursement of System Development Charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

C. The Director shall make written notification of the results of the expenditure review to the interested person who requested the review with ten (10) days of completion of the review.

Section 15. **Institution of Legal Proceedings**. The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Ordinance as an additional remedy.

Section 16. **Exclusive Review in Marion County Circuit Court.** All determinations made under this Ordinance shall be final and subject only to Writ of Review in the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 17. **Effect on Monies Previously Collected.** The provisions of this Ordinance do not apply to System Development Charges collected prior to its effective date. SDCs previously collected shall be governed by the law in effect at the time of collection.

Section 18. **Severability**. If any clause, section, or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 19. **Repeal.** Ordinance 2248 is hereby repealed.

Passed by the Council April 28, 2008 and approved by the Mayor April 30, 2008.

ORDINANCE NO 1084

AN ORDINANCE RELATING TO DISPOSAL OF SEWAGE, WASTE, AND FILTH; THE DRAINING OF ROOF WATER AND CRAWL SPACE; REQUIRING SEWER CONNECTIONS; DECLARING CERTAIN DEPOSITORIES OF WASTE AND FILTH TO BE NUISANCES; PROVIDING FOR ABATEMENT THEREOF AND PROVIDING FOR THE ASSESSMENT AND COLLECTION OF THE COST OF ABATING SUCH NUISANCES; REPEALING ORDINANCES NO. 776, 963, AND 971; AND PRESCRIBING PENALTIES.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. That no privy vault or cesspool will be permitted within the city of Woodburn and the owner, owners, renters, or occupants of property upon which is located a privy vault or cesspool shall cease to deposit or cause to be deposited or permit to be deposited therein sewage. waste, or other drainage matter.

Section 2. That the owner or owners of property within the corporate limits of the city of Woodburn, which property is used by human beings for residential, educational, religious, business, industrial, or other purposes and is within 100 feet of a city sewer declared by the common council of the city of Woodburn to be a sanitary sewer adequate for the disposal of raw sewage, will cause the property to be connected to said sewer at the expense of the owner or owners of said property and that all raw sewage, wastes, and drainage matter shall be deposited directly into the city sewer, except as otherwise provided herein.

Section 3. That no person shall cause or permit any of the following to flow into, or to be disposed of in, the sanitary sewer system of the city of Woodburn.

(1) Temporary or permanent drainage of excavations.

(2) Drainage from roofs, storm sewers, or storm drains.

(3) Greases, oils, or sludge from service stations, garages, repair shops, machine shops, cleaning establishments, or other industries or establishments.

(4) Explosives, volatile or inflammable liquids and gases.

(5) Acids, alkalis, or other corrosive liquids or substances of sufficient strength to damage sewers, manholes, pumping stations, or treatment plant equipment.

(6) Paints or waste products from paint manufacture.

(7) Cannery or industrial wastes other than as specified in Subsection (17) of this section.

(8) Any substance which will form deposits or obstructions in the sewer system, or which, when mixed with sewage, will precipitate materials causing deposits in sewer lines.

(9) Ashes, cinders, sand, earth, coal, rubbish or metals of any kind.

(10) Live steam, exhaust steam or water having a temperature above 140°

(11) Cull fruits or vegetables, or pits or seeds from peaches, apricots, cherries, prunes, pumpkins, squash, or nuts of any kind, unless properly processed through a properly constructed and installed garbage disposal unit.

(12) Stable or barn manure.

(13) Effluent from septic tanks or dry wells.

(14) Offal from slaughter houses.

(15) Dead animals, or fowl or fish.

(16) Sulphate or sulphite liquor.

(17) Effluent waste water from food processing plants, unless it has been passed through a 20-mesh screen prior to entry into the sewer system.

Section 4. Grease, oil and sand traps and settling basins shall be provided by property owners in connection with sewer inlets when, in the opinion of the city engineer, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, flammable wastes, sand or other harmful ingredients, except that such traps and settling basins shall not be required for private living quarters or dwelling units. All such traps and settling basins shall be of a type and capacity approved by the city engineer and shall be so located as to be readily and easily accessible for cleaning and inspection. Grease and oil traps shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. Where installed, all grease, oil and sand traps and settling basins shall be maintained by the owner, at his expense, in continuously efficient operation. [Section 4 added by Ordinance No. 1347, §1, passed February 26, 1973.]

Section 5. That all construction, reconstruction, remodeling and repair commenced after the effective date of this ordinance shall comply with the following:

(1) All crawl spaces provided in connection with buildings or building types shall be leveled and graded to a drain inlet, from where positive drainage shall be secured at all times. The drain inlet shall be protected by a gravel bed or a catch basin with corrosion-resistant screening 4 mesh per inch, applied over tile end. Drain lines from this area to the storm sewer, gutter, ditch or other permanent adequate outfall shall consist of cast iron, vitrified clay, concrete, cement, asbestos or bituminized fibre, sealed joint type of adequate size but not less than four inched in diameter, laid with a slope of not less than ¼ inch per foot.

(2) All downspouts shall be connected to underground drain lines extended to the storm sewer, street gutter, ditch or other permanent adequate outfall. Drain lines shall be of cast iron, vitrified clay, concrete, cements asbestos or bituminized fibre, sealed joint pipe of adequate size, but not less than three inches in diameter, laid with a slope of not less than ¼ inch per foot.

(3) All pipe shall be laid on a good firm foundation with ends abutting and true to a line and grade. Backfilling in trenches shall be carefully deposited and solidly tamped to avoid settlement.

(4) When sheet metal downspouts are connected to underground drain lines, such drain lines shall extend above the finish grade and the joint between downspout and drain line shall be sealed.

(5) Drain lines from downspouts may be interconnected or connected to the drain line from the crawl space. The point of connection between downspout drain line and crawl space drain line shall be at least 10 feet downstream from the dwelling and at least six inches below the drain inlet in the crawl space. Connection of drain lines shall be made with proper fittings.

(6) The outfall of drain lines on the lot or in easements established for drainage purposes shall terminate in a gravel bed or trench.

(7) In all cases where gutters and downspouts are installed, a sealed drainage line from each downspout to a dry well located at least 10 feet from the building shall be the minimum requirement.

Section 6. **Civil Infraction Assessment.** A violation of any provision of this ordinance constitutes a class 1 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 6 as amended by Ordinance 2008, passed October 24, 1988.]

Section 7. In addition to the penalty provisions of this ordinance, the procedures of Ordinance No. 1616 may be followed to abate and to secure the cost of the abatement of a public nuisance under this ordinance. [Section 7 as amended by Ordinance No. 1612, §1, passed June 5, 1978.]

Section 8. That if any person shall be aggrieved by the notice of the marshal, he may take an appeal to the city council within 24 hours notice from the receipt of such notice, and, upon 24 hours notice, a hearing will be held and a decision rendered forthwith thereon.

Section 9. That if any clause, sentence, section or portion of this ordinance shall for any reason be adjudged invalid by a court of competent jurisdiction, such adjudication shall not affect, impair or invalidate any other provisions of this ordinance, but shall be confined in its operation to the controversy directly involved in such adjudication.

Section 10. That Ordinances No. 776. 963 and 971 be, and they thereby are, repealed and that Ordinances No. 942 and 956 are not revived by the repealing of Ordinance No. 963.

[Sections No. 4 - 10 renumbered by Ordinance No. 1347, §2, passed February 26, 1973.]

Passed by the council and approved by the mayor December 3, 1963.

ORDINANCE NO. 1678

AN ORDINANCE PROVIDING FOR SANITARY SEWER CONNECTION FEES IN THE CITY OF WOODBURN, REPEALING ORDINANCE NO. 1354; AND DECLARING AN EMERGENCY.

The people of the City of Woodburn do ordain:

Section 1. Sewer Connection Required. That the owner of any residence, building, structure dwelling or other thing discharging sewage within the City of Woodburn shall initiate connection of such residence, building, structure, dwelling or thing to the sanitary sewer system of the City of Woodburn by written application to the City.

Section 2. Connection Fees. That upon submission of such application, each applicant shall pay to the City of Woodburn, in addition to the regular monthly surcharge and actual construction costs of connection, a connection fee (capacity fee) in the amount specified herein as follows:

(a) For single-family dwellings, manufactured dwelling units, the amount specified in Schedule A hereunder.

(b) For apartments and other multiple-family dwellings, the amount specified in Schedule A for first unit and Schedule B for each additional unit in excess of one.

(c) For motel, hotel, and R.V. park units, the amount specified in Schedule A for the first unit and Schedule D. for each additional unit in excess of one. Laundry facilities will be charged at Schedule C for each machine in addition to the above.

(d) All others, except those provided for under Section 3 of this ordinance, the amount specified in Schedule A, plus the amount specified in Schedule C, for each toilet facility in excess of two toilet facilities shall be paid. Each laundry machine shall be considered as one toilet facility and charged as specified in Schedule C.

(e) Schedules:

Schedule A	Schedule B	Schedule C	Schedule D
$1,000.00	$ 750.00	$ 500.00	$ 410.00

(f) All existing structures constructed prior to May 1977, and remaining on the same site to which City was unable to provide a connection shall be charged at one-half the rate outlined above.

(e) All existing structures constructed prior to May 1977, and remaining on the same site to which City was unable to provide a connection shall be charged at one-half the rate outlined above. [Section 2 as amended by Ordinance 1972, passed April 13, 1987.]

Section 3. **Excessive Demand on Sewer System.** That the provisions of Section 2 herein shall not apply to a particular residence, building, structure or thing when it is determined by the City that such residence, building, structure or thing is of a nature that by its ordinary usage it may place a demand exceeding 1,000 gallons of sewage flow per day, 800 milligrams per litre suspended solids sewage concentration, or 800 milligrams per litre BOD sewage concentration the connection fee shall be determined according to the following formula:

$$C = \$1.46F + \$1.69BOD + \$1.49SS$$

Where:	C	=	connection
	F	=	gallons of average sewage flow per day for peak month.
	SS	=	suspended solids concentration in milligrams per litre, average value for peak month.
	BOD	=	biochemical oxygen demand in milligrams per litre, average value for peak month.

In no case shall the fee charged be less than $1,000.

When it is determined by the City that a residence, building, structure or thing is of a nature that by its ordinary usage it may place an unusually heavy demand on the municipal sanitary sewer system through the discharge of pollutants other than flow, BOD, or suspended solids, the City shall determine a fee based upon the excessive pollutant or pollutants discharged, and said fee shall be payable as in Section 2 herein.

Section 4. **Disposition of Funds.** That all money collected pursuant to the provisions of this ordinance shall be deposited in and credited to a fund to be used for the purpose of paying the costs of expanding the capacity of municipal sewage collection and treatment system, its maintenance facilities and engineering costs. The first priority for expenditure of these funds will be for retirement of capital improvement bonds' principal and interest.

Section 5. **Repeal.** That Ordinance No. 1354 is hereby repealed and Ordinances 1140 and 1239 are not revived.

Section 6. [Emergency clause.]

Passed by the Council August 13, 1979, and approved by the Mayor August 14, 1979.

ORDINANCE NO. 1692

AN ORDINANCE PROVIDING FOR AN INDUSTRIAL COST RECOVERY SYSTEM FOR FEDERAL CONSTRUCTION GRANTS FOR SEWERAGE AND SEWAGE TREATMENT WORKS, RATES AND CHARGES FOR SAME; THE ADMINISTRATION THEREOF; REPEALING ORDINANCE NO. 1690; AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. **Industrial Cost Recovery System Established**. An industrial cost recovery system is hereby established to recover from industrial sewer users those portions of construction grants provided under Public Law 92-500, present or future, which are allocable to such users.

Section 2. **Applicability of Provisions.** Industrial cost recovery provisions shall apply only to any nongovernmental, non-residential user of publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day 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.	Agricultural, Forestry and Fishing.
Division B.	Mining.
Division D.	Manufacturing.
Division E.	Transportation, Communications, Electric, Gas and Sanitary Services.
Division I.	Services.

Section 3. **Recovery Period.** The industrial cost recovery period shall be equal to 30 years, or the design useful life of the treatment works, whichever is the lesser.

Section 4. **User's Share of Cost**. An industrial user's share shall include only that portion of grant assistance allocable to its use or to capacity firmly committed for its use.

Section 5. **Letters of Intent.** Any significant industrial users responsible for more than 10 percent of design flow, or of design pollutant loading of the treatment works shall be required to sign letters of intent stating that the user will pay that portion of the grant amount allocable to the treatment of its wastes.

Section 6. **Criteria for Share Determination.** An industrial user's share shall be based on those factors significantly influencing the cost of the treatment works, such as volume or rate of flow, strength or concentration of waste loading, or any other load factor including those unique to such user.

Section 7. **Schedule of Payments**. Each user shall be required to pay his industrial cost recovery payments at regular intervals, not exceeding six months apart, with first payment to be made within six months after the user first begins use of the treatment works, or has been determined to be subject to the industrial cost recovery program.

Section 8. **Collection and Disbursement of Funds.** Allocation of users' shares and the collection and disbursement or distribution of industrial cost recovery funds shall be in accordance with the rules and regulations of the Environmental Protection Agency, or successor, as administrator of the construction grants program.

Section 9. **Measurement and Sampling**. To evaluate and monitor effluent loadings, the city may require the installation by users of measurement and sampling equipment at the user's expense, for which user shall provide reasonable access to the City Engineer, or his designate, during hours of operation for the purpose of inspecting and monitoring such measurement and sampling.

Section 10. **Administration of System**. The City Engineer shall be charged with administration of the industrial cost recovery system, including allocation of recovery charges.

Section 11. **Delinquency Liens**. Any industrial cost recovery charges remaining unpaid for 60 days after the due date shall be entered on the City Lien Docket and shall be recovered as any other city lien, as provided in the City Charter.

Section 12. **Severability**. If any clause, sentence, paragraph, section or portion of this ordinance for any reason shall be adjudged invalid by a court of competent jurisdiction, such judgement shall not affect, impair, or invalidate any of the remainder of this ordinance.

Section 13. **Repeal**. That Ordinance No. 1690 of the City of Woodburn is hereby repealed.

Section 14. [Emergency clause.]

Passed by the Council December 17, 1979, and approved by the Mayor December 18, 1979.

ORDINANCE NO. 1790

AN ORDINANCE REGULATING THE DISCHARGE OF WASTES TO THE SANITARY AND STORM SEWER SYSTEMS OF THE CITY, LIMITING SUCH DISCHARGES ONLY TO THOSE OF ACCEPTABLE TYPES, CHARACTERISTICS, OR CONCENTRATIONS, ESTABLISHING A SYSTEM OF WASTE DISCHARGE PERMITS, PROVIDING FOR ENFORCEMENT.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. **Declaration of Policy**. It is the policy of the City of Woodburn to provide adequate sewerage facilities for the transportation, treatment and disposal of wastes from within the City and to operate the sewerage systems in a manner which protects public health and the environment. In carrying out this policy, the objectives of this ordinance are:

(a) Preclude pollutants from entering the sewerage systems which will interfere with normal operations or contaminate the resulting sludge or effluent;

(b) Preclude the introduction of pollutants into the sewerage systems which may not be adequately treated and may pass through into the environment;

(c) To enhance the opportunity for recycling and reclamation of wastewater and sludge. It is the intent of the City to provide needed sewerage services to industry while meeting the outlined objectives. This ordinance provides the structure under which the service will be provided for industrial waste so that the systems are protected and can continue to provide efficiently for the waste treatment and disposal [needs] of the City.

Section 2. **Definitions**.

(a) Biochemical Oxygen Demand (BOD). The words "biochemical oxygen demand," or abbreviation thereof as "BOD," shall mean the quantity of oxygen required in the biochemical oxidation of organic matter.

(b) Branch Sewer. The words "branch sewer" shall mean a conduit extending from the plumbing or drainage system of a building or buildings to and connecting with a public or private sanitary or storm sewer, within a street right-of-way.

(c) Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into a public sewer system by specific industrial dischargers.

(d) City Engineer. The term "City Engineer" shall mean the City Engineer of the City of Woodburn, Oregon, or his duly authorized deputy or agent.

(e) City or City of Woodburn. The words "City" or "City of Woodburn" shall mean the municipality of Woodburn, Oregon, a municipal corporation of the State of Oregon, acting through its Common Council or any board, committee, body, official or person to whom the Council shall have lawfully delegated the power to act for, or on behalf of, the City. Unless a particular board, committee, body, official or person is specifically designated in these rules and regulations, wherever action by City is explicitly required or implied herein, it shall be understood to mean action by the City Engineer of Woodburn, Oregon or his duly authorized deputy or agent.

(f) Combined Sewer. The words "combined sewer" or "combined sewer system" shall mean a conduit or system of conduits in which both wastewater and stormwater are transported.

(g) Compatible Pollutant. The words "compatible pollutant" shall mean wastes having biochemical oxygen demand, suspended solids and pH within tolerable limits, fecal coliform bacteria, and such additional pollutants which the City treatment works are designed to treat.

(h) Industrial Discharger/User. Any discharger who discharges other than household wastes directly or indirectly into the City sewer system.

(i) Industrial Waste. The words "industrial waste" shall mean any liquid, solid, or gaseous substance, or combination thereof, resulting from any process of industry, manufacturing, commercial food processing, business, agriculture, trade or research, including but not limited to the development, recovering or processing of natural resources and leachate from landfills or other disposal sites, or any other discharge other than domestic sanitary waste.

(j) Industrial Waste Discharge Permit. A permit to discharge industrial wastes into the City sewer system issued under the authority of this ordinance and which prescribes certain discharge requirements and limitations.

(k) Interference. The inhibition or disruption of the City sewer system collection system, treatment processes or operations.

(l) pH. The symbol "pH" shall mean the reciprocal of the logarithm of the hydrogen ion concentration. The concentration is the weight of hydrogen ions in moles per liter of solution,. Neutral water, for example, has a pH of 7 and a hydrogen ion concentration of 10^{-7}.

(m) Person. The word "person" shall mean any individual, company, enterprise, partnership, corporation, association, society, or group, and the singular term shall include the plural.

(n) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the City sewerage systems.

(o) Restaurant. Any establishment or premises, other than a single-family residential unit, equipped or used for the preparation or serving of food, whether operated on a intermittent or sustained basis.

(p) Sewerage System. The entire sewage collection and treatment systems, exclusive of branch sewers. This includes all conduits, pumps, treatment equipment and any other components involved in the transportation, collection, treatment and disposal of sanitary and industrial wastewater and sludge. This includes both sanitary and storm water systems.

(q) Slugload. Any substance released in a discharge at a rate and/or concentration which causes interference to City sewerage or disposal systems.

(r) Suspended Solids. The words "suspended solids" shall mean total suspended matter that is in suspension in water or wastewater and that is removable by laboratory filtering.

(s) Toxic Pollutants. Those substances listed by the City Engineer as toxic pollutants. The list is based upon the priority pollutant list prepared by the U.S. Environmental Protection Agency and any additional information available which indicates toxicity or hazard level of particular substances.

(t) Upset. An exceptional incident in which a discharge unintentionally and temporarily is in a state of non-compliance with the discharge requirements set forth in this ordinance due to factors beyond the reasonable control of the discharger, and excluding non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation thereof.

(u) Wastewater. Industrial waste, or sewage or any other waste including that which may be combined with any ground water, surface water or storm water, that may be discharged to the City sewerage systems.

Section 3. General Discharge Prohibitions.

(a) Use of restricted sewers. It shall be unlawful to discharge, permit the discharge, or allow a connection which will result in the discharge of sanitary sewage or industrial waste into a public sewer under City control which has been designated by the City Engineer to be used solely for storm drainage. It shall be unlawful for any person to discharge or permit the discharge or cause or allow a connection which will result in the discharge of storm drainage or uncontaminated water from refrigeration or cooling processes or steam condensate, into a public sewer under City control designated by the City Engineer to be used solely for sanitary sewage.

(b) Prohibited Discharges. It shall be unlawful to discharge, cause or allow to discharge directly or indirectly into the City sewage systems any of the following:

(1) Waters or wastes containing substances in such concentrations that they inhibit or interfere with the operation or performance of any sewage treatment process, are not amenable to treatment or reduction by the sewage treatment process employed, or are only partially amenable to treatment such that the sewage treatment plant effluent cannot meet the requirements of any other agency having jurisdiction over its discharge to the receiving waters or that prevents the use or disposal of sewage treatment plant sludge in accordance with applicable State and Federal regulations.

(2) Any liquids, solids, or gases, which by reason of their nature or quantity, are, or may be sufficient, either alone or by interaction, to cause fire or explosion or to be injurious in any other way to the operation of the sewer system. Prohibited materials include, but are not limited to, gasoline, benzene, naphtha, alcohols, fuel oil, mineral oil and other flammable or explosive substances.

(3) Any solid or viscous substances capable of obstructing sewage which will or may cause obstruction to the flow of sewage or interference with the operation of the sewerage works or treatment facilities. These substances include, but are not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.

(4) Any noxious or malodorous liquids, gases, solids, or other substances when either singly, or by interaction with other wastes, are capable of creating a public nuisance or hazard to life or health, or preventing entry into any sewer, manhole, or pump station.

(5) Any water or waste containing a toxic or poisonous substance in sufficient quantity, either singly or by interaction with other substances, to injure or interfere with any sewage treatment process; to constitute a hazard to humans or animals; or to create any hazard in, or adversely affect the receiving waters; or result in unacceptable concentrations of these substances being discharged in combined sewer overflows or sewage treatment plant effluents.

(6) Any wastes, waste waters or substances having a pH less than 6.0 or more than 10.0, or having any other corrosive property capable of causing damage or hazard to piping, structures, equipment, or personnel of the sewerage systems. This includes, but is not limited to, battery or plating acids and waste, copper sulfate, chromium salts and compounds, or salt brine. [Section 3(b)(6) amended by Ordinance 2074, passed January 13, 1992.]

(7) Any liquid or vapor having a temperature higher than 150` F or containing heat in amounts which will inhibit biological activity, resulting in septage in sewers, or interference at treatment plants. In no case shall there be heat in such quantities that the temperature of sewage inflow at any lift station exceeds 104` F.

(8) Any material from a cesspool or septic tank, except such material received at a City treatment plant under City permit.

(9) Any water or waste which contains in excess of one hundred milligrams per litre, or a lesser amount as fixed by the City Engineer, for a particular establishment, of fat waste, oil or grease, whether or not emulsified, ether-soluble or n-hexane soluble matter, or any substance which may solidify or become discernibly viscous at temperatures above 32N F.

(10) Any domestic garbage that has not been properly comminuted to 1/8-inch, or less, in any dimension.

(11) Any slugload, which means any pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage systems.

(12) Any substances with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(13) Any wastewater which may cause a hazard to human health, or may create a public nuisance.

(14) Any unusual concentrations of inert suspended solids which may interfere with the operation of the sewerage systems, such as, but not limited to, fuller's earth, lime slurries, or lime residue.

(15) Any unusual concentrations of dissolved solids which may interfere with the operation of the sewerage systems, such as, but not limited to, sodium chloride, calcium chloride, and sodium sulfate.

(16) Any radioactive material, except in compliance with the current "Oregon Regulations for the Control of Radiation" (OAR 333-22-150).

(17) Any food-processing wastes retained on a 20-mesh screen. If material retained on a 20-mesh screen is being discharged, the industrial sewage rate for suspended solids may be estimated on the basis of concentrated dip-samples of such effluent, but this shall not bar correction of the discharge condition under the provisions of Section 11.

(18) Any grease or fat from any restaurant. Such establishments shall install, within 60 days from the date of notice, adequate grease-traps from all sinks and dish washers. Such grease traps shall be of such capacity as to require cleaning not more than twice a week. Each such establishment shall maintain a log, signed by the servicing employee, of all service and cleaning, available to City personnel inspecting.

(19) Any oil, grease, distillate, gasoline, or any other petroleum product which may be discharged to any sanitary or drainage system. Such systems shall be protected by adequate, approved, oil separators, or alternative disposal. All establishments selling motor oil shall provide facilities for draining and disposal of waste oil, or provide sufficient supervision of parking areas that no waste oil be discharged to sanitary or storm sewerage systems. Such establishments shall obtain industrial pollution permits, citing their provisions for preventing pollution. One discharge of waste oil shall be sufficient cause for injunctive relief for cessation of such offerage of motor oil for sale.

Section 4. Discharge Limitations

(a) It shall be unlawful for a discharger who has an effective Industrial Waste Discharge Permit pursuant to Section [7] to discharge wastes to the sewer system in excess of the limitations established in the permit. The City Engineer shall establish Industrial Waste Discharge Permit limitations to the extent necessary to enable the City to comply with current National Pollutant Discharge Elimination System categorical and general standards and waste discharge requirements as promulgated by the U.S. Environmental Protection Agency and the Oregon State Department of Environmental Quality; to protect the public health and safety; to protect the receiving water quality; to protect the sewerage system; and to comply with all other applicable Federal and State laws.

(b) It shall be unlawful to discharge into the sewerage systems concentrations of the following materials in excess of the specified limits, unless the discharger has in effect an Industrial Waste Discharge Permit from the State of Oregon which establishes a different limitation for a specific pollutant.

Pollutant	Concentration Limit
Arsenic	1.0 mg/l
Cadmium	1.0 mg/l
Chromium (Total)	5.0 mg/l
Copper	2.0 mg/l
Cyanid	1.0 mg/l
Iron	10.0 mg/l
Lead	2.0 mg/l
Nickel	3.0 mg/l
Phenols or Cresols	1.0 mg/l
Zinc	4.0 mg/l

(c) It shall be unlawful for a discharger to increase the use or addition of potable or process water as a partial or complete substitute for adequate treatment to achieve compliance with the standards and limitations set forth in this Chapter or in an Industrial Waste Discharge Permit issued pursuant hereto.

Section 5. Pretreatment Facilities.

(a) If treatment facilities, operation changes or process modifications at an industrial discharger's facility are needed to comply with any requirements under this section, or are necessary to meet any applicable State or Federal requirements, the City Engineer may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the City sewerage systems, economic impact on the facility, impact of the waste on the marketability of the City treatment plant sludge, and any other appropriate factors.

(b) Any requirement in Section 5 may be incorporated as part of an Industrial Waste Discharge Permit issued under Section 7 and made a condition of issuance of such permit or may be incorporated in a contractual agreement between the City and the affected facility and made a condition of the acceptance of the waste from that facility.

(c) Plans, specifications and other information relating to construction or installation of preliminary treatment facilities or optional disposal required by the City Engineer under this Chapter shall be submitted to the City Engineer and the Oregon Department of Environmental Quality. No construction or installation thereof shall commence until written approval of plans and specifications by the City Engineer and the Oregon Department of Environmental Quality is obtained. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City and of the State relating to construction and to permits. Every facility for the preliminary treatment or handling of industrial wastes shall be constructed in accordance with the approved plans and specifications, and shall be installed and maintained at the expense of the occupant of the property discharging the industrial wastes.

(d) Any person constructing a preliminary treatment facility, as required by the City Engineer, shall also install and maintain at his own expense sampling manhole(s) for checking and investigating the discharge from the preliminary treatment facility to the public sewer. The sampling manhole(s) shall be placed in a location designated by the City Engineer and in accordance with specifications approved by the City Engineer.

Section 6. Reporting Requirements.

(a) Initial Compliance Report.

(1) Within ninety (90) days after receiving notification that an Industrial Waste Discharge Permit is required, the discharger subject to this Chapter shall submit a report to the City Engineer which indicates the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily flow in gallons. The report shall also state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operations and maintenance and/or pretreatment is necessary to

bring the discharger into compliance with the applicable standards and requirements. This statement shall be signed by an authorized representative of the discharger and certified to by a qualified professional.

(2) Such reports shall be completed in compliance with the current General Pretreatment Regulations for Existing and New Sources of Pollution.

(3) If the information required in Section 6 has already been provided to the City Engineer and that information is still accurate, the discharger shall reference the submitted information and is not required to submit it again.

(b) Periodic Compliance Reports.

(1) Any discharger that is required to have an Industrial Waste Discharge Permit pursuant to Section 7 shall submit to the City Engineer during the months of June and December, unless required on other dates and/or more frequently by the City Engineer, a report indicating the nature of the effluent over the previous six month period. The report shall include, but is not limited to, the concentration (and mass if limited in the permit) of the limited pollutants and a record of all daily flow measurements which exceeded the average daily flow reported in Section 6.

(2) The frequency of the monitoring shall be determined by the City Engineer and specified in the Industrial Waste Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard.

(3) Flows shall be reported on the basis of actual measurement, provided, however, where cost or feasibility considerations justify, the City Engineer may accept reports of average and maximum flows estimated by verifiable techniques.

(4) The City Engineer may require reporting by dischargers that are not required to have an Industrial Waste Discharge Permit if information and/or data is needed to establish a sewer rate charge, determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewerage systems.

(c) Confidential Information. Information and data furnished to the City Engineer with respect to the nature and frequency of discharge shall be available to the public or other governmental agency without restriction unless the discharger specifically requests and is able to demonstrate to the satisfaction of the City Engineer that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets or proprietary information of the discharger. When requested by a discharger furnishing a report, the portions of a report which may disclose trade secrets or secret processes shall not be made available for inspection by the public but shall, upon written request, be made available to governmental agencies for uses related to this ordinance, National Pollutant Discharge Elimination System, State waste disposal requirements and/or the Pretreatment

Program; provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the discharger furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the City Engineer as confidential, shall not be transmitted to any governmental agency, nor to the general public, by the City Engineer until and unless a ten-day notification be given to the discharger.

Section 7. Industrial Waste Discharge Permits.

(a) Requirement for a Permit.

(1) Except as provided in this section any waste discharger shall have an Industrial Waste Discharge Permit prior to discharging into the City sewer system, if:

(a) The discharge is subject to promulgated National Categorical Pretreatment Standards; or,

(b) The discharge is significant in the opinion of the City Engineer. Significant discharges include, but are not limited to, the following:

(i) Discharges containing compatible pollutants in concentrations or quantities that are subject to extra strength charges; or,

(ii) Discharges containing incompatible pollutants in concentrations or quantities which may interfere with the operation of the sewerage systems or increase the costs of operation; or,

(iii) Discharges which have a maximum instantaneous flow which exceeds ten percent of the capacity of the available lateral or appropriate trunk sewer.

(c) The discharger is required to provide and maintain any form of pre-treatment or any separation process, including grease traps or oil separators.

(2) Existing Discharges.

(a) Discharges that were in existence prior to the date that an Industrial Waste Discharge Permit was required shall be notified in writing by the City Engineer that such a permit is required. Such existing dischargers shall be allowed to continue discharging into the City sewer system without an Industrial Waste Discharge Permit until a permit issued or denied provided that the discharger files a completed application for an Industrial Waste Discharge Permit within 90 days of the receipt of such notice.

(b) Discharges allowed under Section 7 shall meet all other applicable requirements of this code.

(b) Application for an Industrial Waste Discharge Permit.

(1) Application for an Industrial Waste Discharge Permit shall be made to the City Engineer on forms provided by the Department of Public Works. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the City Engineer.

(2) Completed applications shall be made within 90 days of the date requested by the City Engineer or, for new discharges, at least 90 days prior to the date the discharge is to begin.

(c) Issuance of Industrial Waste Discharge Permits.

(1) Industrial Waste Discharge Permits shall be issued or denied by the City Engineer within 90 days after a completed application is filed.

(2) Industrial Waste Discharge Permits shall contain conditions which meet the requirements of this code as well as those of applicable State and Federal laws and regulations.

(3) If pretreatment facilities are needed to meet the discharge criteria of the discharge permit, the permit shall require the installation of such facilities.

(4) Whenever a discharge permit requires installation or modification of monitoring or metering equipment, or of treatment facilities, or of process changes necessary to meet discharge standards, or for spill control requirements, a compliance schedule shall be included which establishes the dates for completion of the changes and all appropriate interim dates. Interim dates shall be no more than 90 days apart.

(5) Discharge permits shall expire no later than 5 years after the effective date of the permit.

(6) The City Engineer may deny the issuance of any discharge permit if the discharge may result in violation of any City, State, or Federal law or regulation, may overload or cause damage to any portion of the City sewerage systems, or may create any imminent, latent, or potential hazard to personnel, the public, or the environment.

(d) Modification of Permits.

(1) An Industrial Waste Discharge Permit may be modified for good and valid cause at the written request of the permittee and at the discretion of the City Engineer.

(2) Permittee modification requests shall be submitted to the City Engineer and shall contain a detailed description of all proposed changes in the discharge. The City Engineer may require any additional information needed to adequately evaluate the modification or assess its impact.

(3) The City Engineer may deny a request for modification if the change may result in a violation of City, State or Federal laws or regulations, may overload or cause damage to any portion of the City sewerage systems, or may create any imminent or potential hazard to health, or the environment.

(4) If a permit modification be made at the direction of the City Engineer, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and shall be informed of the reasons of the change.

(e) Change in a Permitted Discharge. Any modification to the permittee's discharge permit must be issued by the City Engineer before any significant change is made in the volume or level of pollutants in an existing permitted discharge to the City sewerage system. Changes in the discharge involving the introduction of a waste stream not previously included in the Industrial Waste Discharge Permit or involving the addition of new pollutants shall be considered as a new discharge, requiring application under Section 7.

(f) Permit Fees. Permit fees and renewal fees, shall be as established by the Common Council, by motion, upon recommendation of the City Engineer. All monies received for Waste Discharge Permit Fees shall be expended only for the administration, monitoring or enforcement of the provisions of this ordinance.

Section 8. Inspection and Sampling.

(a) Inspection.

(1) Authorized City representatives may inspect the monitoring facilities of any industrial waste discharger to determine compliance with the requirements of this ordinance. The discharger shall allow the City or its authorized representatives to enter upon the premises of the discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination. The City shall also have the right to set up on the discharger's property any such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right-of-entry shall include access to all portions of the premises that contain facilities for sampling, measuring, treating, transporting or otherwise handling wastes, and for storing records, reports or documents relating to the treatment, sampling, or discharge of the wastes. The City Engineer, or his authorized deputy, shall have the power to make such inspections, without warrant, during any time of operation of the facility.

(2) Conditions of Entry.

(a) The authorized City representative shall present appropriate credentials at the time of entry;

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling or testing in accordance with the provisions of this ordinance;

(c) The entry shall be made at reasonable times during any operating or business hours unless an emergency situation exists as determined by the City Engineer.

(d) All valid safety, security and sanitary requirements of the facility to be inspected shall be complied with by the City representative(s) entering the premises.

(b) Sampling.

(1) Samples of wastewater being discharged into the sewerage systems shall be representative of the discharge and shall be taken after treatment, if any, and before dilution by other water. The sampling method shall be one approved by the City Engineer and done in accordance with good engineering practice.

(2) Samples that are taken by City personnel for the purpose of determining compliance with the requirements of this ordinance may be split with the discharger (or a duplicate sample provided in the instance of fats, oils and greases), if requested before or at the time of sampling.

(3) All sample analyses shall be performed in accordance with the procedures set forth in 40 CFR, Part 136 and any amendments thereto or with any other test procedures approved by the Administrator of the Environmental Protection Agency. If there are no approved test procedures for a particular pollutant, then analyses shall be performed using other validated procedures approved by the City Engineer.

(c) Sampling Manhole. The City Engineer may require a discharger to install and maintain, at the discharger's expense, suitable manhole(s) in the discharger's branch sewer(s) to allow observation, sampling and measurement of all industrial wastes being discharged into the City sewer system. They shall be constructed in accordance with plans approved by the City Engineer and shall be designed so that flow measuring and sampling equipment may be conveniently used or installed. Access to the manhole shall be available to City representatives at all times. It shall be located in a street right-of-way or on an easement with ready access from a street, not behind any fence or gate, except for which the City shall be provided a key or keys.

Section 9. Spill Prevention and Control.

(a) Notification. Any person becoming aware of spills or uncontrolled discharges of prohibited or restricted substances, directly or indirectly, into the City sewerage systems, shall immediately report such discharge by telephone to the City Engineer.

(b) Posted Notice. A notice informing employees of the notification requirement and containing a telephone number for the individual to contact in the event of such a discharge shall be posted in a conspicuous place, visible to all employees that may reasonably be expected to observe such a discharge.

(c) Preventive Measures. Direct or indirect connections or entry points which could allow spills or uncontrolled discharges of prohibited or restricted substances to enter the City sewer system shall be eliminated, labeled, or controlled, so as to prevent the entry of wastes in violation of this ordinance. The City Engineer may require the industrial user to install or modify equipment or make other changes necessary to prevent such discharges as a condition of issuance of an Industrial Waste Discharge Permit or as a condition of continued discharge into the City sewer system. A schedule of compliance shall be established by the City Engineer which requires completion of the required actions within the shortest reasonable period of time. Violation of the schedule without an extension of time by the City Engineer shall be a violation of this ordinance.

(d) Spill Prevention and Control Plans.

(1) Industrial users that handle, store or use prohibited or restricted substances on their sites shall prepare a spill prevention plan within 90 days of notice by the City Engineer directed at preventing the entrance of those substances, directly or indirectly, into the City sewerage systems. The plan, as approved by the City Engineer, shall be posted and available for inspection at the facility during normal business hours and shall include, but not be limited to, the following elements:

(i) A description of the potential points of entry into the City sewerage systems;

(ii) A description of the measures to be taken to prevent entry at the described points before a spill occurs;

(iii) Measures to be taken to contain a spill of prohibited or restricted materials;

(iv) A description of employee training in the prevention and control of spills. A valid SPCC plan required under the Federal Clean Water Act may be acceptable in lieu of developing a new spill control plan, provided the plan adequately addresses the elements required.

(2) If any user has a spill or uncontrolled discharge of prohibited or restricted substances into the City sewer, the City Engineer may require the user's spill prevention and control plan to be resubmitted, may require revisions to be made in the plan, and may require any such user, even residential, to fully comply with the requirements of this ordinance.

Section 10. Acceptance of Extra-Strength Industrial Waste. The City Engineer may agree to accept industrial wastewater which exceeds the limitations set forth in Section 4, provided that:

(a) Limitations established in compliance with promulgated Federal Pretreatment Standards under the Clean Water Act or under Section 3 of this ordinance are not exceeded; and,

(b) Adequate treatment capacity exists at the waste treatment plant for effectively treating the additional waste strength; and,

(c) The commercial or industrial discharger requests the City Engineer to accept the industrial wastes on the basis of payment to the City of extra-strength charges as determined by him; and,

(d) The wastewater is being discharged to a sanitary or combined sewer; and,

(e) The discharger shall affirm responsibility for all other provisions of this ordinance; and,

(f) All other sewage rates shall be in accordance with the Woodburn sewer rate ordinance; and,

(g) All additional charges for extra-strength discharges shall be as determined by the City Engineer.

Section 11. Enforcement.

(a) Violations.

(1) A violation shall have occurred when any requirement of this ordinance has not been met; when a written demand of the City Engineer, made under the authority of this ordinance, is not met within the specified time; when a condition of a permit, or contract, issued under the authority of this ordinance is not met within the specified time; when effluent limitations are exceeded, regardless of intent or accident; or when false information has been provided by the discharger.

(2) Each day a violation occurs shall be considered as a separate violation.

(b) Notice of Violation. Upon determination by the City Engineer that a violation has occurred, or is occurring, the City Engineer may issue a written Notice of Violation to the discharger which shall outline the violation and the potential liability. The Notice may further request correction of the violation within a specified time and/or require written confirmation of the correction or of efforts being made to correct the violation, by a specified date. The Notice shall be personally delivered to the discharger's premises or be sent certified or registered mail, return receipt requested.

(c) Judicial Action. The City Engineer may initiate appropriate civil or criminal action through the City Attorney in a Court of competent jurisdiction to enjoin a violation and obtain corrective measures and any other appropriate relief.

(d) Termination or Suspension of a Discharge.

(1) The City Engineer may terminate a discharge into the City sewer system or suspend such discharge for a specified length of time or terminate water and sewer services to the premises, if:

(i) The discharge presents or may present an imminent and substantial endangerment to the health or welfare of persons or the environment, or causes interference with the operation of the City sewer system; or,

(ii) The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure; or,

(iii) Directed by a Court of competent jurisdiction.

(2) Notice of termination or suspension shall be provided to the discharger prior to terminating or suspending the discharge.

(i) In situations that are not emergencies, the notice shall be in writing, shall contain the reasons for the termination or suspension, the effective date, and the name, address and telephone number of a City contact, shall be signed by the City Engineer, and shall be received at the business address of the discharger no less than thirty days prior to the date specified for termination or suspension.

(ii) In situations that are determined to be emergencies by the City Engineer, the initial notice may be verbal or written and shall contain the information required above. If verbal notice is given, it shall be delivered to the owner or operator of the discharging facility and shall be followed within 2 working days by a written notice that is mailed or delivered to the business address of the discharger. The effective date of the termination or suspension in emergency situations may be immediately after verbal or written notice has been given as required in this paragraph.

(iii) For the purposes of this section, an emergency situation is defined as a situation in which action must be taken as rapidly as possible in order to prevent or reduce a present or potential danger or hazard to health, safety, sewerage systems, treatment processes, or receiving streams.

(e) Cost Recovery.

(1) The City Engineer may recover all reasonable costs of repairing damages to the City sewerage systems, extra treatment required, restoration of inhibited or disrupted treatment processes, and of paying fines or penalties which result from a discharge not in compliance with the requirements of EPA or DEQ, the Waste Discharge Permit, or of this ordinance.

(2) Claim for the costs shall be by letter to the discharger; sent certified or registered mail, return receipt requested, which shall state the specific violation(s), the damages and penalties sustained by the City, the costs of those damages and penalties, and all other costs the City Engineer has determined as attributable to the discharge and, therefore, billed to the discharger.

(3) The costs are due and payable by the discharger upon receipt of the letter. If not paid within 30 calendar days, water and sewer services to the premises may be physically disconnected and the amount due and the cost of disconnection shall be assessed against the property on the docket of City liens.

(f) Operating Upsets. Any discharger who experiences an upset in operations which places the discharger in a temporary state of non-compliance with this ordinance or an Industrial Wastewater Discharge Permit issued pursuant to Section 7 shall inform the City Engineer of the upset within 2 hours of the first awareness of it. Where such information is given orally, a written follow-up report shall be filed by the discharger with the City Engineer within five days. The report shall specify:

(1) Description of the upset, the cause thereof and the upset's impact on the discharger's compliance status.

(2) Duration of non-compliance, including exact dates and times of non-compliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur.

(3) All steps taken or to be taken to reduce, eliminate or prevent recurrence of such an upset or other conditions of non-compliance.

Section 12. Records Retention. All dischargers subject to this ordinance shall retain and preserve for no less than three years, all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or in behalf of a discharger in connection with its discharge. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City Engineer pursuant hereto shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

Section 13. Conflict. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Section 14. Severability. If any provision, paragraph, word, section or chapter of this ordinance is invalidated by any Court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

Section 15. Penalties.

(1) Violation of any provision of this ordinance constitutes a class 1 infraction and shall be dealt with according to the procedures established by Ordinance No. 1610.

(2) Each day a violation of this ordinance continues shall be considered a separate violation. [Section 15 as amended by Ordinance 2008, passed October 24, 1988.]

Passed by the Council September 13, 1982, and approved by the Mayor September 14, 1982.

ORDINANCE NO. 2058

AN ORDINANCE ALLOWING A SEWER CAPACITY FEE PAYMENT PLAN FOR CERTAIN PROPERTIES UTILIZING SUBSURFACE SEWAGE DISPOSAL SYSTEMS AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "City Engineer" shall mean the City Engineer of the City of Woodburn.

(B) "Finance Director" shall mean the Finance Director of the City of Woodburn.

(C) "Local Government Investment Pool" shall have the meaning given that term in ORS 294.805 to 294.895.

(D) "Owner" shall mean any person, firm, corporation, or other entity having legal title to real property subject to the applicable sewer capacity fee and possessing legal authority to authorize the docketing of a lien against said property.

(E) "Sewer Capacity Fee" shall mean a non-refundable fee charged by the city to allow an owner to use a portion of the city's sewerage capacity, also known as a sanitary sewer connection fee or systems development charge.

(F) "Subsurface Sewage Disposal System" shall have the meaning given that term in ORS 454.605.

Section 2. General Provisions

(A) The owner of real property utilizing a subsurface sewage disposal system incorporating twenty (20) or more dwelling units has the option of paying sewer capacity fees utilizing a four-year payment plan.

(B) The first installment of said fees described above is due and payable at the time of connection, with the remaining installments payable on the basis determined by the City according to the payment plan.

(C) This installment payment plan of sewer capacity fees is exercised at the option of the owner. Written application for such option must be filed by the owner, and approved by the city prior to connection.

(D) The owner is responsible to insure that all scheduled payments are made when due. The owner is not relieved of this obligation even though the city may allow the due date to pass without receiving payment. The city may declare the remaining balance due and payable in full when the owner fails to make scheduled payments on

time. At the city's option, failure to make scheduled payments may result in disconnection.

(E) If the installment payment option is utilized, the balance owed to the city, including interest thereon, may be paid in advance by the owner at any time without penalty.

Section 3. **Administration**. The City Engineer shall be responsible for implementation of this ordinance by allowing the connections to the city sewerage system and by making other technical and payment plan decisions. The Finance Director shall be responsible to program the servicing plan so that bills are sent to owners. The City Engineer shall provide documents needed by the Finance Director for serving of the payment plan.

Section 4. **Interest Rate**. Interest shall be fixed at the date of inception of the plan at the rate quoted by the local government investment pool (per annum) plus 1½% rounded to the nearest one-tenth of one percent.

Section 5. **Severability**. If any section, clause, or phrase of this ordinance is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remainder of this ordinance which shall continue to be in full force and effect.

Section 6. [Emergency clause.]

Passed by the Council April 8, 1991, approved by the Mayor April 9, 1991.

ORDINANCE NO. 2157

AN ORDINANCE APPROVING PLACEMENT OF CHARGES ON WASTEWATER DISCHARGE UTILIZING WATER USE MONITORING OR OTHER ESTIMATING METHODS FOR THE OPERATION AND MAINTENANCE OF MUNICIPAL SEWERAGE SYSTEMS, PROVIDING FOR SUCH CHARGES AND THE COLLECTION THEREOF, REPEALING ORDINANCE NO. 2059, AND SETTING AN EFFECTIVE DATE.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **General Provisions.** That a charge, as provided in this ordinance, will be added to each municipal water bill or statement issued by the City of Woodburn. Such charges will apply to all monthly periods of water use and service received from the City, and such charges will be collected from water users in the same manner and under the same provisions of law as other charges for water use and services. Such charges will be levied against each water account, excepting those accounts providing only fire or irrigation service, and other services which do not utilize the city sewerage system for their wastewater treatment and disposal.

A like charge may be made to all premises within the city limits which are supplied with water from sources other than the city water system. A separate charge will be collected from all premises outside the City which discharge to the city sewerage system. The premises connected to a water system other than the city system may be required to provide metering devices for the waste discharge calculations. An additional charge will be collected for "recreational vehicle waste water discharge" stations. All city municipal service buildings will continue to be exempted from the charges outlined in this ordinance unless modified by council action. Interpretation and administration of this ordinance and its provisions will be the responsibility of the City Engineer.

This ordinance also deals with permitted industrial/commercial loading-related service charges. However, the city-issued waste discharge permits that reflect EPA and DEQ requirements and other capacity connection fee requirements related to loadings, are not covered by this ordinance.

(Section 1 as amended by Ordinance 2286 passed May 14, 2001)

Section 2. **Abbreviations & Definitions:**

BOD	=	Biochemical oxygen demand
SBOD	=	Soluble BOD
cu. ft.	=	cubic feet
gal.	=	gallon(s)
TSS	=	Total suspended solids
POTW	=	Public Owned Treatment Works
EPA	=	Environmental Protection Agency
DEQ	=	Department of Environmental Quality

Single Family Unit: A stick built or manufactured house, designed for permanent occupation by a single family which includes kitchen and bathroom facilities, on its own lot, with or without accessory structures.

Multi family Unit: 1) Any dwelling unit designed for separate, permanent occupation by more than one family and which each separate unit includes kitchen and bathroom facilities.

2) Any recreation room with bathroom, sink, and cooking facilities.

Section 3. **Treatment Capability and Acceptance of Sewage:** The City, at its discretion, may refuse to accept sewage loadings from industrial/commercial users or septage haulers, if such loading is beyond permitted loading or if such loading, in the opinion of the City, reasonably places the treatment process at risk or may cause violation of the City's permit.

Section 4. **Industrial User Billing:** Industrial users may be required to install metering and sampling devices to monitor flow, BOD, suspended solids and any other necessary constituents. The industry may be required to combine all effluent lines to a single point for such metering/sampling and to monitor their effluent discharge. The City may bill on an estimated basis if the user fails to perform the required monitoring and sampling. Any or all of the following criteria may be used to determine if an industry is to be billed as an industrial user:

A. The user is permitted to discharge more than 0.8 percent (0.8%) of the designed average dry weather hydraulic, organic or solid handling load to the City's POTW.

B. The user has a non-domestic flow of 25,000 gallons or more per average work day.

C. The user is determined by the POTW Superintendent to have a significant impact upon POTW operations.

D. The user comes under the national categorical pretreatment standards promulgated by the EPA.

E. The City has issued the user an industrial discharge permit.

Section 5. **Monthly Sewerage Charge:** The monthly sewerage charges required by Section 1 of this ordinance will be according to the following schedule:

A. All sewer charges for residential, commercial and industrial customers will be based on a minimum plus volume of sewage discharged method. In addition, industrial customers will also be charged for BOD and TSS.

B. Residential minimum plus volume method will be the average consumption of water for the four (4) winter months (November/December through February/March) and it will be considered as the amount of sewage discharged from each dwelling unit. The winter month average will be determined by the water meter readings taken or other needed estimating methods by Public Works for unusual cases. General estimating and billing methods are outlined below:

1. In the first year of the minimum plus volume method implementation, the November/December through February/March bills will be based on the actual consumption for each month. Starting in March/April, each of the following twelve (12) months will be billed based on the average of the three (3) low months out of the four (4) recent winter months (November/December through February/March). Every year a new average will be calculated using the immediately preceding winter month's consumption. (Section 5(B)(1) amended by Ordinance 2164 passed March 25, 1996.)

2. For residential units where a full four (4) months of consumption readings are not available for averaging, such as vacations or vacancies due to change in ownership, a minimum of three (3) full months of readings may be used for averaging or two full months of readings supplemented by partial month daily water consumption outlined under Section 5(B)(9). (Section 5(B)(2) amended by Ordinance 2164 passed March 25, 1996.)

3. Residential structures that are served by the city sewerage system, but not connected to city water, will be billed at the city wide residential average consumption rate of 700 cu. ft. per unit

4. If the winter average exceeds three other consecutive months average, then at the request of the property owner, the city may replace the winter average with the average of three other consecutive months for the remaining future annual billing cycle. No credit shall be given for the prior billings and there shall be no extra charge for the adjustment. Also, Public Works shall make adjustments to wastewater charges for properties disrupted by natural disaster that affects the flow of wastewater to the city system. (Section 5(B)(4) amended by Ordinance 2164 passed March 25, 1996.)

a. Replacement of residential winter average with average of other three consecutive months and adjustment of charges:

i. If the winter average exceeds three other consecutive months average, then at the request of the property owner, the city may replace the winter average with the average of three other consecutive months for the remaining future annual billing cycle.

ii. The wastewater charges to an account when three-month average is implemented to replace winter average shall be adjusted as outlined below:

Amount of credit shall be limited to the summation of actual revenue received in three months under consideration less summation of calculated revenue in the same three-month period that is used to develop lower billing average. (Section 5(B)(4)(a) added by Ordinance 2171 passed June 10, 1996.)

b. Adjustment to wastewater charges for properties disrupted by a natural disaster affecting wastewater flow:

i. Public Works will evaluate the disruption to wastewater flow because of a natural disaster and make adjustment accordingly. During the period while a structure is being rehabilitated and there is no wastewater flow, there shall be no wastewater charge based on the winter average, otherwise an estimate that reflects the use of least flow will be used. (Section 5(B)(4)(b) added by Ordinance 2171 passed June 10, 1996.)

5. If there is no occupancy of buildings during the winter months, then the aver of the two (2) prior months, i.e., September and October, or 700 cu. ft., whichever is less, may be used for billing purposes, until and unless a representative average of the winter months is developed or estimated.

6. For new structures or new customers, the city-wide residential average of 700 cubic feet per unit per month may be used until an actual average can be calculated using three (3) full months following occupancy. If the calculated average is below 700 cu. ft., then the calculated average will be used for billing, and a credit shall be given deducting the summation of the three-month average from the actual revenue received during that period. If the calculated average is above 700 cu. ft., then the city-wide residential average of 700 cul ft. will be used for billing purposes until the next winter average is calculated. For new structures, the sewer charges begin when the certificate of occupancy is issued, or three (3) months after the installation of the water meter unless the owner notifies the city that the building is not occupied. (Section 5(B)(6) amended by Ordinance 2171 passed June 10, 1996.)

7. All sewer structures located within 300 feet of an adequate city sewer main, and experiencing septic system failure, must connect to the city sewer system. No new subsurface wastewater treatment and disposal (septic tank system) shall be allowed within the city limits. (Section 5(B)7 as amended by Ordinance 2286 passed May 14, 2001.)

8. There will be no additional charge for consumption analysis and adjustments other than that for leak adjustments as outlined in Section 9.

9. When a dwelling unit has been occupied for not less than 10 days and/or the water consumption for the month is below 100 cu. ft., then partial month daily water consumption method may be used to project consumption for that month under consideration for averaging purposes.

C. Commercial bills will be based on the actual water use for that month. Commercial structures that are connected to city water and are located within 100 feet of an adequate sewer line but not connected to the sewer, will be charged the minimum usage of 600 cu. ft. per unit.

D. Industrial bills will be based on the actual consumption for that month plus the loading charges (BOD and TSS).

E. RATES:

Customer Class	Minimum Charge	Minimum Volume	Volume Charge/ Above Minimum
1. RESIDENTIAL			
a. Single Family, Churches PER UNIT	$20.20	500 cu. ft.	$3.59/100 cu.ft.
b. Multi Family, Apartments, Mobile Home in a Park, Condos, Motel, Hotel PER UNIT	$20.20	500 cu. ft.	$3.59/100 cu.ft.
c. Residential unit not on City metered water system, PER UNIT	$27.38	- - - - - -	- - - - - -
(NOTE: Above is based on estimate discharge of 700 cu. ft./mo. City may require metering if higher discharge is estimated by the City Engineer)			
2. COMMERCIAL Businesses, Schools, R.V. Parks, Care Centers, etc. PER METER	$25.54	600 cu. ft.	$5.49/100 cf.
3. INDUSTRIAL (includes first 25 lbs. BOD and 9 lbs. TSS)	$54.62 ☐	1,000 cu. ft.	Above Minimum a) Volume Charge $2.27/100 cu.ft. b) BOD Charge: $0.85/lb. c) TSS Charge: $0.25/lb.

4. ABANDONED OR NON REVENUE PRODUCING SERVICE:
Abandonment procedures may be started by the City, if a building is unoccupied for a period of 18 months, with proper notification to the property owner, as outlined in Resolution No. 1100, and/or minimum billing may be started for the building under consideration.

5. WASTEWATER DISCHARGE STATION - RV, etc. (in addition to standard charge)

a. Residential type sewage discharge station at commercial establishments,

PER MONTH

i. For multiple RV dump stations	$25.54	Minimum/connection
ii. For individual RV units in Park	$2.75	Minimum/connection per 50 cu. ft.

6. <u>SEPTAGE</u> - per truck load

a. Residential, PER GALLON	$0.0625	$28.00/min.
b. Commercial, PER GALLON	$0.0825	$28.00/min.

Effective July 1, 2005 the septage rate will be:

a. Residential, PER GALLON	$0.070	$30.00/min.
b. Commercial, PER GALLON	$0.095	$30.00/min.

Septage rates above apply only to the service area identified in the Pudding River Service Provider Study, March 1995. Other areas will be charged $0.085 PER GALLON for residential or commercial septage.

[Section 5.E.6 as amended by Ordinance 2367, passed July 26, 2004.]

7. <u>Individual Recreational Vehicles discharging at Wastewater Treatment Plant</u>

Per vehicle NO CHARGE

8. <u>Mixed Residential/Commercial Accounts</u>

This category uses the residential or commercial rates outlined under subsections "1" to "3" above. The criteria for using a mixed residential/commercial method are outlined below:

a) If no monitoring device is available, then the City may reasonably estimate charges based on the available facts, such as number of employees, product, or other criteria.

b) If one City monitoring device serves more than one category of user, then the charges will be as follows:

1) If separation of service is not practical (as determined by the City Engineer), then the service charge will be at the residential rate for the first 700 cubic feet of water, for each residential unit. The remaining will be at the commercial rate.

2) If service monitoring separation is practical but not utilized, then the charge for the entire service will be at the commercial rate. The customer may request the City for a separate monitoring device for each category of service by paying the established meter installation fee.

Section 6. **Capital Cost Recovery Agreements.** The City, at its discretion, may enter into agreements with industrial dischargers for the purpose of recovering the City's incurred or anticipated costs used to modify POTW that benefit the industry. This cost, after Council's approval, may be divided into a number of payments, and added to the monthly invoice, rather than one lump sum payment. The cost recovery agreements may reflect the construction costs, interest, engineering and administration costs for POTW modifications needed to accommodate industrial growth.

Section 7. **Large Septage Load Charge:** The intent of this charge is to discourage users from discharging large loads (lbs./day) of permitted waste to the city system during the dry weather season (June, July, August, September, October) that could reduce reliability of the city sewerage system. Prior to the construction of the new treatment plant, if septage waste is accepted at the present treatment system during the dry weather season, and if such loads will not place the treatment process at risk, the septage hauler rate may be multiplied by a factor of two (2). If the load will place risk to treatment process, then the City may choose not to accept such a load.

Section 8. **Unauthorized Connection and Service:**

A. Unauthorized Connection: A 25 percent (25%) administrative charge may be added to the service connection or capacity fee if a property is connected to the system without first obtaining the proper permit and paying the required fees. This 25 percent (25%) may be added to the regular fee in effect at the time the unauthorized connection is discovered by the City. The added surcharge may be excused if the property owner volunteers the information and comes forward to pay the required connection fee.

B. Unauthorized Service: An administrative charge of 25 percent (25%) may be added to the City utility service charge if a property receives City service and the customer does not inform the City to start the billing. The charge calculated will be limited to a twelve (12) month period. The City may make a reasonable estimate of the amount due.

C. This section will not be construed to limit the City's right to pursue any and all available legal remedies in regards to unauthorized connections or service.

Section 9. **Customer Billing Adjustments.** If the City, in the preceding twelve (12) months, has overcharged a customer for the sewer service, and it is brought to the attention of the City Engineer, then he will make an adjustment using available records of the past year. The adjustment will be limited to a period of four (4) months falling within the past year. A similar adjustment for undercharge maybe made but it will be limited to a period of two (2) months. In the case of water leakage, an adjustment for a one or two month period will be made if the leak has been promptly repaired and the request for leak adjustment has been made within six (6) months. Such adjustments will not exceed 100% of the estimated excess flow attributable to the leak. A charge of $10.00 will be added for any sewer charge adjustment due to water leaks.

Section 10. **Installation of Monitoring Clean Out:** If the City wants to install a clean out on the service line near the house or business for infiltration monitoring and reduction, it may do so if a ten (10) day notice prior to construction activity has been provided to the property owner. The City may not charge for the installation of the clean out or for monitoring and infiltration reduction although it may be located on the private property.

Section 11. **Increase in Rates and Charges.** Future rate adjustments will be established by Council action at a frequency and in an amount determined to be fiscally responsible for supporting service obligations, ensure POTW compliance with EPA/DEQ regulations, and to protect the environment and public health.

Section 12. **Service Agreements.** All prior Council-approved service agreements between the City and a customer will remain in force for the term of the agreement. However, the requirements of this ordinance and other applicable ordinances, including the rate increase provisions, must be met.

Section 13. **Use of Monies Collected.** That the monies collected pursuant to the provisions of this ordinance will be used to pay the costs of construction, operation, maintenance and expansion of sanitary and storm sewers, sewage treatment plants, pumping stations, and related facilities and services, including necessary administrative and engineering costs.

Section 14. **Administration.** Interpretation and administration of this ordinance and its provisions will be the responsibility of the City Engineer.

Section 15. **Severability Clause.** If any clause, sentence, paragraph, section or portion of this ordinance for any reason may be adjudged invalid by a court of competent jurisdiction, such judgment will not affect, impair, or invalidate any of the remainder of this ordinance.

Section 16. **Repeal.** Ordinance No. 2059 is hereby repealed.

Section 17. **Effective Date.** This ordinance is effective on November 1, 1995.

Passed by the Council September 11, 1995, and approved by the Mayor September 12, 1995.

ORDINANCE NO. 2176

AN ORDINANCE REGULATING THE DISCHARGE OF WASTES TO THE SANITARY AND STORM SEWER SYSTEMS OF THE CITY, LIMITING SUCH DISCHARGES ONLY TO THOSE OF ACCEPTABLE TYPES, CHARACTERISTICS, OR CONCENTRATIONS, ESTABLISHING A SYSTEM OF WASTE DISCHARGE PERMITS, PROVIDING FOR ENFORCEMENT AND DECLARING AN EMERGENCY.

SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for direct and indirect discharges of pollutants into the wastewater collection, storm water collection and treatment system for the City of Woodburn and enables the City to comply with all applicable State and Federal laws including the Clean Water Act (Act 33 U.S.C. 1251 et seg.), the General Pretreatment Regulations (40 CFR Part 403) and Oregon Administrative Rules (OAR) Chapter 340. The objectives of this ordinance are:

(1) To prevent the introduction of pollutants into the municipal wastewater and storm water system which will interfere with the operation of the system;

(2) To prevent the introduction of pollutants into the municipal wastewater and storm water system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;

(3) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows it's beneficial use;

(4) To protect both municipal personnel who may come into contact with sewage, sludge and effluent in the course of their employment as well as protecting the general public;

(5) To preserve the hydraulic capacity of the municipal wastewater system;

(6) To improve the opportunity to recycle and reclaim wastewater and sludge from the system;

(7) To provide for equitable distribution of the cost of operation, maintenance and improvements of the municipal wastewater

system; and

(8) To ensure the City complies with its NPDES permit conditions, sludge use and disposal requirements and any other Federal or State laws which the municipal wastewater system is subject.

This ordinance provides for the regulation of direct and indirect discharge to the municipal wastewater collection system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This ordinance shall apply to the City and to persons outside the City who, by contract or agreement with the City, are included as users of the municipal wastewater system.

1.2 Administration

Except as otherwise provided herein, the Superintendent shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Superintendent may be delegated by the City Engineer or Superintendent to other City personnel.

1.3 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance shall have the meanings hereinafter designated;

(1) Act or "the Act". The Federal Water Pollution Control Act, also know as the Clean Water Act, as amended, 33 U.S.C.1251 et seq.

(2) Approval Authority. The Oregon Department of Environmental Quality (DEQ)

(3) Authorized Representative of the Industrial User.

A. If the industrial user is a corporation, authorized representative shall mean:

i) The president, secretary, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or

decision-making functions for the corporation, or

ii) The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

B. If the industrial user is a partnership, association, or sole proprietorship, an authorized representative shall mean a general partner or the proprietor.

C. If the individual user is representing Federal, State or local governments, or an agent thereof, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

D. The individuals described in subsections A-C above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the authorization is submitted to the City.

(4) Biochemical Oxygen Demand (BOD) The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration (milligrams per liter mg/l).

(5) Building Sewer. A sewer conveying wastewater from the premises of a user to the POTW.

(6) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the USEPA in accordance with Section 307 (b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of industrial users and which appears in 40 CFR Chapter I, Subchapter N, Parts 405-471, incorporated herein by reference.

(7) City. City of Woodburn, Oregon, a municipal corporation of the State of Oregon, acting through its City Council or any board,

committee, body, official, or person to whom the Council shall have lawfully delegated the power to act for or on behalf of the City.

(8) City Engineer. The City Engineer (Public Works Director) of the City of Woodburn, Oregon, or his duly authorized agent(s).

(9) Color The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

10) Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on either an increment of flow or time.

11) Control Authority. The term "Control Authority" shall refer to the Superintendent once the City has a pretreatment program approved by Oregon DEQ according to the provisions of 40 CFR 403.11.

12) Continuing Violation. Each day a violation occurs may be considered as a separate violation.

13) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, to which the only pollutant added is heat.

14) Department of Environmental Quality or DEQ. The Oregon Department of Environmental Quality or where appropriate, the term may also be used as a designation for the Director of the Department or other duly authorized official of the Department.

15) Discharge. The discharge or the introduction of pollutants into the municipal wastewater system from any non-domestic source regulated under Section 307 (b), (c) or (d), of the Act.

16) Environmental Protection Agency or U.S. EPA. The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

17) Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards under section 307 (b) and (c) (33 U.S.C. 1317) of the Act which will be applicable to such source if the standard is thereafter promulgated in accordance

with Section 307 of the Act.

18) Grab Sample. A sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and without consideration of time.

19) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

20) Industrial User. Any person which is a source of discharge.

21) Industrial Waste Coordinator. The person designated by the City to carry out certain duties and responsibilities associated with the pretreatment program. This person is the duly authorized representative of the Superintendent in accordance with Section 1.3 (47) of this ordinance.

22) Industrial Waste Water. A non-domestic wastewater originating from a nonresidential source.

23) Infiltration. Any water other than wastewater which enters the sewage treatment system (including service connections) from the ground, typically from broken pipes, or defective joints in pipes and manhole walls.

24) Inflow. Any water from storm water runoff which directly enters the sewage system during or immediately after rainfall. Typical points of entry include, but are not limited to, connections with roof and area drains, storm drain connections, holes in manhole covers in flooded streets, cooling water discharges, catch basins, and drainage from springs and swampy areas.

25) Interference. A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

A. Inhibits or disrupts the municipal wastewater system, its treatment processes or operations, or its sludge processes; use or disposal; and

B. Therefore is a cause of a violation of any requirements of the NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the

Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection research and Sanctuaries Act.

26) Local Limits / Specific Pollutant Limitations. Enforceable local requirements developed by POTWs to address federal standards as well as state and local regulations.

27) Medical Waste. Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

28) Municipal Wastewater System or System. A "treatment works" as defined in Section 212 of the Act, (33 U.S.C. 1292) which is owned by the State or municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having the responsibility for the operation and maintenance of the system.

29) National Pretreatment Standard. National pretreatment standard is defined in 40 CFR 403.3 (j) as any regulation containing pollutant discharge limits promulgated by EPA under Section 307 (b) and (c) of the Clean Water Act applicable to industrial users, including the general and specific prohibition found in 40 CFR 403.5.

30) New Source.

A. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307 (c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

ii) The building, structure, facility or installation completely replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site in determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (i), (ii), (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

C. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

i) Begun, or caused to begin as part of a continuous on-site construction program;

(a) Any placement, assembly, or installation of facilities or equipment; or

(b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new sources facilities or equipment; or

ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contacts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

31) <u>Non-domestic Pollutants.</u> Any substances other than human

excrement and household gray water (shower, dish washing operations, etc.). Non-domestic pollutants include the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).

32) Pass Through. A discharge which exits the treatment plant effluent into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES (including an increase in the magnitude or duration of a violation).

33) Person. Any individual, partnership, CO-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, state, or local governmental entities.

34) pH. The logarithm (base 10) of the reciprocal of the hydrogen ion concentration expressed in moles per liter of solution.

35) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and agricultural wastes, anything that contaminates.

36) Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the municipal wastewater system. This reduction or alteration may be obtained by physical, chemical or biological processes, by process changes or by other means.

37) Pretreatment Requirement. Any substantive or procedural requirements related to pretreatment, other than national pretreatment standards, imposed on an industrial user.

38) Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

39) Prohibited Discharge Standard or Prohibited Discharges. Absolute prohibitions against the discharge of certain types or characteristics of wastewater as established by EPA, DEQ and/or the Superintendent.

40) Receiving Stream or Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

41) Domestic Sewage. Human excrement and gray water (household showers, dish washing operations, etc.)

42) Significant Industrial User.

A. Except as provided in paragraph B of this section the term Significant Industrial User means:

i) All industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow down wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6).

B. Upon a finding that an industrial user meeting the criteria in paragraph A. (ii) of this section has no reasonable potential for adversely affecting the municipal waste water system's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

43) Slug Load. Any pollutant (including BOD) released in a non-routine, episodic, or non-customary batch discharge at a flow rate or concentration which has the potential to cause a violation of the specific discharge prohibitions in Section 2 of this Ordinance.

44) State. State of Oregon

45) Storm Water. Any flow occurring during or following any form of natural precipitation and resulting therefrom, including snow melt.

46) Suspended Solids or Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

47) Superintendent. The person designated by the City to supervise the operation of the municipal wastewater system and who is charged with certain duties and responsibilities by this article or his duly authorized representative.

48) Toxic Pollutant. One of the pollutants or combination of those pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency under the provision of Section 307 (33 U.S.C. 1317) of the Act.

49) Treatment Plant. That portion of the municipal wastewater system designed to provide treatment of sewage and industrial waste.

50) Treatment Plant Effluent. Any discharge of pollutants from the municipal wastewater system into waters of the state.

51) User. Any person who contributes, or causes or allows the contribution of sewage or industrial wastewater into the municipal wastewater system, including persons who contribute such wastes from mobile sources.

52) Violation. Shall have occurred when any requirement of this ordinance has not been met; or when a written request of the Superintendent, made under the authority of this ordinance, is not met within the specified time; or when a condition of a permit or contract issued under the authority of this ordinance is not met within the specified time; or when permitted effluent limitations are exceeded, regardless of intent or accident; or when false information has been provided by the discharger.

53) Wastewater. The liquid and water-carried industrial wastes, or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which is contributed to the municipal wastewater system.

This ordinance is gender neutral and the masculine gender shall include the feminine and vice versa. Shall is mandatory; may is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

- BOD Biochemical Oxygen Demand
- CFR Code of Federal Regulations
- COD Chemical Oxygen Demand
- DEQ Oregon Department of Environmental Quality
- EPA U.S. Environmental Protection Agency
- gpd Gallons Per Day
- LC_{50} Lethal Concentration for Fifty Percent (50%) of the Test Organisms
- l Liter
- mg Milligrams
- mg/l Milligrams per liter
- NPDES National Pollutant Discharge Elimination System
- O&M Operation and Maintenance
- POTW Publicly Owned Treatment Works
- RCRA Resource Conservation and Recovery Act
- SIC Standard Industrial Classification
- SWDA Solid Waste Disposal Act (42 U.S.C. 6901, et seq.
- TSS Total Suspended Solids
- USC United States Code

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will cause interference or pass through. These general prohibitions apply to all users of the municipal wastewater system whether or not the user is subject to categorical pretreatment standards or any other National, State or local pretreatment standards or requirements. Furthermore, no user shall contribute the following substances to the system:

(1) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in

any other way to the municipal wastewater system. Included in this prohibition are wastestreams with a closed cup flash point of less than 140° F (60° C) using the test methods prescribed in 40 CFR 261.21.

(2) Solid or viscous substances in amounts which will cause interference with the flow in a sewer but in no case solids greater than one half inch (2") (1.27 centimeters) in any dimension.

(3) Any fat, oils or greases, including but not limited to petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(4) Any wastewater from a grab sample having a pH less than 5.5 su. or more than 10.0 su., or which may otherwise cause corrosive structural damage to the system, city personnel or equipment.

IUs using continuous pH monitoring devices are prohibited from discharge when:

A. The total time pH values are outside the range of 5.5 su. to 10.0 su. exceeds 16 hours in any calendar month. In no case shall the pH fall below 5.0 su. or above 12.5 su.

B. No individual excursion from pH range of 5.5 su. to 10.0 su. shall exceed 60 minutes for any single duration. In no case shall the pH fall below 5.0 su. or above 12.5 su.

(5 Any wastewater containing pollutants in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to pass through or interfere with the municipal wastewater system, any wastewater treatment or sludge process, or constitute a hazard to humans or animals.

(6) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(7) Any substance which may cause the treatment plant effluent or any other residues, sludge, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the system cause the City to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste

Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other State requirements applicable to the sludge use and disposal practices being used by the City.

(8) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plants effluent thereby violating the City's NPDES permit.

(9) Any wastewater having temperature greater than 150° F (65° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

(10) Any wastewater containing any radioactive waste or isotopes except as specifically approved by the Superintendent in compliance with applicable State and Federal regulations.

(11) Any pollutants which result in the presence of toxic gases, vapor or fumes within the system in a quantity that may cause worker health and safety problems.

(12) Any hauled pollutants, except at discharge points designated by the City in accordance with Section 3.6 of this Ordinance.

(13) Storm water, surface water, groundwater, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, cooling water and unpolluted industrial wastewater, unless specifically authorized by the Superintendent.

(14) Any sludge, screening, or other residues from the pretreatment of industrial wastes.

(15) Any medical wastes, except as specifically authorized by the Superintendent in a wastewater permit.

(16) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

(17) Any material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Superintendent.

(18) Any wastewater causing the treatment plant effluent to

demonstrate toxicity to test species during a bio-monitoring evaluation.

(19) Recognizable portions of the human body or animal anatomy.

(20) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

Waste prohibited by this section shall not be processed or stored in such a manner that these waste could be discharged to the municipal wastewater system.

2.2 Federal Categorical Pretreatment Standards

Users subject to categorical pretreatment standards are required to comply with applicable standards set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

(1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Superintendent may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c)

(3) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Superintendent shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(4) A user may obtain a variance from categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(5) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

2.3 State Requirements

Users are required to comply with applicable State pretreatment standards and requirements set out in OAR Chapter 340 and incorporated herein.

2.4 "Local Limits" Specific Pollutant Limitations

No person (user) shall discharge wastewater containing restricted

substances into the municipal wastewater system in excess of limitations specified in its Wastewater Discharge Permit or published by the Superintendent. The more stringent of either the categorical standards or the specific pollutant limitations "Local Limits" for a given pollutant will be placed in the permit.

The Superintendent shall publish and revise from time to time standards for specific restricted substances "Local Limits". These standards will be adopted or rejected through resolution by the City Council. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this ordinance. Standards published in accordance with this section will be deemed Pretreatment Standards for the purposes of Section 307 (d) of the Act. At the discretion, of the Superintendent mass or permit specific limitations may be imposed in addition to or in place of the concentration based limitations referenced above.

2.5 City's Right to Revision

The City reserves the right to establish, by ordinance or in wastewater permits, more stringent limitations or requirements for discharge to the municipal wastewater system if deemed necessary to comply with the objectives presented in Section 1.1 of this Ordinance or the general and specific prohibitions in Section 2.1 of this Ordinance.

2.6 Special Agreement

The City reserves the right to enter into special agreements with users setting out special terms under which the industrial user may discharge to the system. In no case will a special agreement waive compliance with a pretreatment standard. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. Industrial users may also request a variance from the categorical pretreatment standard from US EPA. Such a request shall be approved only if the user can prove that factors relating to its discharge are fundamentally different from the factors considered by US EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

2.7 Dilution

No user shall ever increase the use of process water, or in any way attempt to dilute, a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard, or any other pollutant-specific limitation developed by the City.

2.8 Deadline for Compliance with Categorical Standards

Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I Subchapter N.

New sources shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

2.9 Inflow and Infiltration

All property owners and responsible users identified by the City as contributors to excessive or improper infiltration or inflow into the treatment works shall be advised of their infiltration or inflow problems. All such properties shall be provided a 180-day grace period in which to correct the identified infiltration and inflow problems, said 180-day grace period to extend from the date of notification. By the end of the 180-day grace period, each property owner shall notify the City that corrective actions have been taken or are in progress, and describe the actions being taken.

A property owner failing to notify the City of corrective actions prior to the end of the 180-day grace period shall be subject to termination of service without further notice, and water service shall be immediately discontinued and shut off until the violations shall have been corrected in accordance to federal, state, and City regulations.

In the event any instance of excessive infiltration or inflow into the treatment works of the City shall continue beyond the 180-day grace period, it is hereby declared that such continuing infiltration or inflow is a public nuisance, that the City Engineer shall have the right to abate such a public nuisance, to enter upon any private property within the City for such a purpose, and to assess the cost of such abatement as a lien against the property upon which such infiltration and inflow occurs. The City Engineer shall assess the cost of such abatement to the property from which infiltration and inflow occurs. An administration fee of $350.00 dollars or 5% of the cost, whichever is greater, shall be assessed by the City Engineer in addition to all cost of abatement. The assessment of all cost shall be levied by the filing of a statement of such costs together with the description of the property or properties to be assessed and the name of the owner(s) thereof with the City Recorder. The City Recorder shall enter

the assessment as a lien against such property in the Lien Docket of the City.

No new connections from inflow sources into the water pollution control facilities shall be permitted without the approval of the City Engineer.

SECTION 3 - PRETREATMENT OF WASTEWATER

3.1 Pretreatment Facilities

Industrial users shall provide necessary wastewater treatment as required to comply with this Ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 2 above, within the time limitations specified by the Superintendent. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Ordinance.

3.2 Additional Pretreatment Measures

Whenever deemed necessary, the Superintendent may require industrial users to restrict the industrial user's discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the municipal wastewater system and determine the industrial user's compliance with the requirements of this Ordinance.

(1) Each person discharging, into the municipal wastewater system greater than 100,000 gallons per day or greater than five percent (5%) of the average daily flow in the system, whichever is lesser, may be required by the Superintendent to install and maintain, on his property and at his expense, a suitable storable and flow control facility to ensure equalization of flow over a twenty-four (24) hour period. The facility shall have a capacity for at least fifty percent (50%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Superintendent. A wastewater permit may be issued solely for flow equalization.

(2)Grease, oil and sand interceptors shall be provided, when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner, at his expense.

(3) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

3.3 Spill Prevention

Each industrial user shall provide protection from accidental or intentional discharges of prohibited materials or other substances regulated by this Ordinance. Significant Industrial users that handle, store or use prohibited or restricted substances on their sites shall prepare a spill prevention plan for the Superintendent's approval within 90 days of notice. The plan shall be posted and available for inspection at the facility during normal business hours.

(1) Spill Prevention Plan

At least once every two (2) years the Superintendent shall evaluate industrial users that handle, store, or use prohibited or restricted substances on their sites. The Superintendent will use the evaluation to determine the need for the Industrial User to develop a spill prevention plan. Alternatively, the Superintendent may develop such a plan for any user and require the plan's implementation. An accidental discharge/sludge control plan shall address, at a minimum, the following:

A. Description of discharge practices, including non-routine batch discharges;

B. Description of stored chemicals;

C. Procedures for immediately notifying the Superintendent of any accidental or slug discharge, as required by Section 6.6 of this ordinance;

i. Procedures for any person becoming aware of spill, treatment upset or uncontrolled discharges of prohibited or restricted substances, directly or

indirectly, into the City sewerage systems immediately reporting such discharge to the POTW Superintendent. Where such information is given orally a written follow-up report within (5) five days may be required.

ii. A notice informing employees of the notification requirement and containing a telephone number for the individual to contact in the event of such a discharge shall be posted in a conspicuous place visible to all employees that may reasonable be expected to observe such a discharge

D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and or measures and equipment for emergency response.

(2) Spill Prevention Facilities

Facilities to prevent the discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Superintendent for review and shall be approved by the Superintendent before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this Ordinance.

(3) Preventive Measures

If any user has a spill or uncontrolled discharge of prohibited or restricted substances into the City sewer, the POTW Superintendent may require the user's spill prevention and control plan to be resubmitted, with revisions, in order to fully comply with the requirements of this ordinance. The POTW may also require the industrial user to install, modify equipment and/or make other changes necessary to prevent such discharges as a condition of issuance of and Industrial Waste Discharge Permit or as a condition of continued discharge into the City sewer system. A schedule of compliance for construction completion may be established by the POTW Superintendent.

The Superintendent may require connections or entry points which could allow spills or uncontrolled discharges of prohibited or restricted substances to enter the City sewer systems to be eliminated, labeled, or controlled, so as to prevent the entry of wastes in violation of this ordinance.

3.4 Tenant Responsibility

Any person who shall occupy an industrial user's premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of this Ordinance in the same manner as the Owner.

3.5 Separation of Domestic and Industrial Wastestreams

All domestic wastewaters from rest rooms, showers, drinking fountains, etc. unless specifically included as part of a categorical pretreatment standard, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through a required pretreatment system and the industrial user's monitoring facility. When directed to do so by the Superintendent, industrial users must separate existing domestic wastestreams.

3.6 Hauled Wastewater

Septic tank waste (septage) will be accepted into the municipal wastewater system at a designated receiving structure within the POTW area, and at such times as are established by the Superintendent, provided such wastes do not contain toxic or hazardous pollutants, and provided such discharge does not violate any other requirements established by the City. Permits for individual vehicles to use such facilities shall be issued by the Superintendent.

(1) All waste haulers, regardless of the origin of the hauled wastes, shall be considered "industrial users" for the purposes of this ordinance and required to apply for a waste hauler permit.

(2) The discharge of domestic septage wastes from commercial or industrial sites requires prior approval of the Superintendent. The Superintendent shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation.

(3) Fees for the discharge of septage will be established as part of the user fee system as authorized in Section 14.

3.7 Vandalism

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure,

appurtenance or equipment, or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in Section 10, below.

3.8 Grease Interceptors

The City may inspect grease interceptors (i.e., traps, oil/water separators) to insure proper installation and maintenance. Users may be required to reimburse the City for cleaning and additional maintenance of public sewer mains due to discharge of grease caused by noncompliance with these rules and regulations.

(1) In the event the City, during routine line maintenance, discovers an accumulation of grease in a public line sufficient to restrict the normal flow of waste, upstream IUs shall be inspected. When the City determines which user was responsible for the grease or oil discharge, the user may be required to cease discharge of the prohibited waste, install an interceptor, maintain the interceptor, and may be charged for the cost of cleaning the line.

SECTION 4 - WASTEWATER PERMIT ELIGIBILITY

4.1 Wastewater Survey

When requested by the Superintendent all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Superintendent is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be considered a violation of this ordinance and subjects the industrial user to the sanctions set out in Section 10.

4.2 Wastewater Permit Requirement

It shall be unlawful for significant industrial users to discharge wastewater into the City's sanitary sewer system without first obtaining a wastewater permit from the Superintendent. Any violation of the terms and conditions of wastewater permit shall be deemed a violation of this Ordinance and subjects the industrial user to the sanctions set out in Section 10. Obtaining a wastewater permit does not relieve a permittee of its obligation to obtain other permits required by Federal, State or local law.

The Superintendent may require other non-domestic users, including liquid waste haulers, to obtain waste water permits as necessary to carry out the purposes of this chapter.

4.3 Permitting Existing Connections

Any significant industrial user, without a current industrial discharge permit, which discharges industrial waste into the municipal wastewater system prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the City for a wastewater permit in accordance with Section 4.6 below, and shall not cause or allow discharges to the system to continue after one hundred eighty (180) days of the effective date of this Ordinance except in accordance with a permit issued by the Superintendent.

4.4 Permitting New Connections

Any significant industrial user proposing to begin or recommence discharging industrial wastes into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge. An application for this permit must be filed at least ninety (90) days prior to the anticipated start up date.

4.5 Permitting Extra-Jurisdictional Industrial Users

Any existing significant industrial user located beyond the City limits shall submit a permit application, in accordance with Section 4.6 below, within ninety (90) days of the effective date of this Ordinance. New significant industrial users located beyond the City limits shall submit such applications to the Superintendent ninety (90) days prior to any proposed discharge into the municipal system. Upon review of such application, the Superintendent may enter into a contract with the industrial user which requires the industrial user to subject itself to and abide by this Chapter, including all permitting, compliance monitoring, reporting, and enforcement provisions herein. Alternately, the Superintendent may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements against said user.

4.6 Wastewater Permit Application Contents

In order to be considered for a wastewater permit, all industrial users required to have a permit must submit the following information on an application form approved by the Superintendent.

(1) Name, mailing address, and location if different from the mailing address);

(2) Environmental control permits held by or for the facility;

(3) Standard Industrial Classification (SIC) codes for pretreatment the industry as a whole and any processes for which categorical pretreatment standards have been promulgated.

(4) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged to the municipal system;

(5) Number and type of employees, and hours of operation, and proposed or actual hours of operation of pretreatment system.

(6) Each product by type, amount, process or processes and rate of production;

(7) Type and amount of raw materials process (average and maximum per day);

(8) The site plans, floor plans and mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation, and all points of discharge.

(9) Time and duration of the discharge.

(10) Measured average daily and maximum daily flow, in gallons per day, to the municipal system from regulated process streams and other streams as necessary to use the combined wastestream formula in 40 CFR 403.6(e);

(11) Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly, and seasonable variations, if any;

(12) Wastewater constituents and characteristics, including any pollutants in the discharge which are limited by Federal, State, and local standards, pretreatment standards applicable to each regulated process; and nature and concentration (or mass if pretreatment standard requires) of regulated pollutant in each regulated process (daily maximum and average concentration or mass when required by a pretreatment standard) Sampling and analysis shall be undertaken in accordance with 40 CFR Part 136; and certified that sampling is representative of normal work cycles

and expected pollutant discharges.

(13) A statement reviewed by an authorized representative of the user and certified to by a qualified professional indicating whether or not the pretreatment standards are being met on a consistent basis, and if not, what additional pretreatment is necessary.

(14) If additional pretreatment and/or O&M will be required to meet the standards, then the industrial user shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule;

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to above shall exceed nine (9) months nor shall the total compliance period exceed thirty-six (36) months.

B. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Superintendent including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.

(15) Any other information as may be deemed by the Superintendent to be necessary to evaluate the permit application.

(16) A new source discharger may provide estimates as to the character and volume of pollutants described in 4.6 (10)(11)(12). Incomplete or inaccurate applications shall not be processed and shall be returned to the industrial user for revision.

4.7 Application Signatories and Certification

All permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user.

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4.8 Wastewater Permit Decisions

The Superintendent will evaluate the data furnished by the industrial user and may require additional information. Within sixty (60) days of receipt of a complete permit application, the Superintendent will determine whether or not to issue a wastewater permit. If no determination is made within this time period, the application will be deemed denied.

If any waters or wastes are discharged, or area proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 2, and which in the judgment of the Superintendent, may have a deleterious effect upon the municipal treatment system, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may take any of the following actions:

(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 discharge, and/or

(4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

SECTION 5 - WASTEWATER PERMIT ISSUANCE PROCESS

5.1 Wastewater Permit Duration

Permits shall be issued for a specific time period, not to exceed five (5) years. A permit may be issued for a period less than five (5) years, at the discretion of the Superintendent. Each permit shall indicate a specific date upon which it will expire.

5.2 Wastewater Permit Contents

Wastewater permit shall include such conditions as are reasonably deemed necessary by the Superintendent to prevent pass through or interference and to implement the objectives of this Ordinance.

(1) Wastewater Permits shall contain the following conditions:

A. A statement that indicates permit duration, which in no event shall exceed 5 years.

B. A statement that the permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new owner or operator with a copy of the existing permit.

C. Effluent limits applicable to the user based on applicable standards in Federal, State and local law.

D. Self monitoring, sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law.

E. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(2) Permits may contain, but need not be limited to, the following:

A. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulations and equalization.

B. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

C. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

D. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

E. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.

F. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.

G. Requirements for installation and maintenance of inspection and sampling facilities and equipment.

H. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.

I. Requirements for immediate reporting of any instance of noncompliance and for automatic re-sampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).

J. Compliance schedules for meeting pretreatment standards and requirements.

K. Requirements for submission of periodic self- monitoring or special notification reports.

L. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified in Section 6.12 and affording the Superintendent, or his representatives, access thereto.

M. Requirements for prior notification and approval by the Superintendent of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction in the system.

N. Requirements for the prior notification and approval by the

Superintendent of any change in the manufacturing and/or pretreatment process used by the permittee.

O. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system.

P. A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit.

Q. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this ordinance, and state and federal laws, rules, and regulations; the term of the permit.

5.3 Wastewater Permit Appeals

Any person including the industrial user may petition the Superintendent to reconsider the terms of the permit within ten (10) days of the issuance of the final permit.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative conditions, if any, it seeks to place in the permit.

(3) The effectiveness of the permit shall not be stayed pending the appeal.

(4) If the Superintendent fails to act within fifteen (15) days, the request for reconsideration shall be deemed denied.

(5) Aggrieved parties seeking judicial review of the final administrative permit decision must do so by petitioning for a Writ of Review in the Marion County Circuit Court, pursuant to ORS Chapter 34, within sixty (60) days of the final administrative decision.

5.4 Wastewater Permit Modifications

The Superintendent may modify the permit for good cause including, but not limited to, the following:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements.

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance.

(3) A change in the municipal wastewater system that requires either a temporary or permanent reduction or elimination of the authorized discharge.

(4) Information indicating that the permitted discharge poses a threat to the City's municipal wastewater system, City personnel, or the receiving waters.

(5) Violation of any terms or conditions of the wastewater permit.

(6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.

(7) Revisions of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.

(8) To correct typographical or other errors in the permit.

(9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

The filing of a request by the permittee for a permit modification does not stay any permit condition.

5.5 Wastewater Permit Transfer

Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the Superintendent if the permittee gives at least thirty (30) days advance notice to the Superintendent. The notice must include provision for furnishing the new owner or operator with a copy of the existing permit and a written certification by the new owner which:

(1) States that the new owner has no immediate intent to change the facility's operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing permit.

Failure to provide advance notice of a transfer renders the wastewater permit terminated.

5.6 Wastewater Permit Revocation

The Superintendent may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;

(2) Falsifying self-monitoring reports;

(3) Tampering with monitoring equipment;

(4) Refusing to allow the City timely access to the facility premises and records;

(5) Failure to meet effluent limitations;

(6) Failure to pay administrative penalties;

(7) Failure to pay sewer charges;

(8) Failure to meet compliance schedules;

(9) Failure to complete a wastewater survey;

(10) Failure to provide advance notice of the transfer of a permitted facility;

(11) Violations of any pretreatment standard or requirement or any terms of the permit or the ordinance.

(12) Failure to provide prior notification to the Superintendent of changed conditions pursuant to Section 6.5 of this Ordinance.

(13) Misrepresentation of, or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(14) Failure to complete a wastewater discharge permit application.

Wastewater discharge permits shall be voidable upon cessation of operations, or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater permit to that user.

5.7 Wastewater Permit Reissuance

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with Section 4.6 a minimum of ninety (90) days prior to the expiration of the user's existing permit.

5.8 Regulation of Wastewater Received from other Jurisdictions

If another municipality, or user(s) locate within another municipality or jurisdiction, contribute(s) wastewater to the municipal wastewater system, the Superintendent shall enter into an intermunicipal or interjurisdictional agreement with the contributing municipality or jurisdiction, or enter into a contract with the user(s), in accordance with requirements specified in the City's pretreatment procedures.

SECTION 6 - REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the municipal system shall be required to submit to the City a report which contains the information listed in paragraph 6.1(1), below. At least ninety (90) days prior to commencement of their discharge, new sources, including existing users which have changed their operation or processes so as to become new sources, shall be required to submit to the City a report which contains the information listed in paragraph 6.1(1). A new source shall also be required to report the method it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(1) The information required by this section includes:

A. Identifying Information. The user shall submit the name and address of the facility including the name of the operator and owners;

B. Permits. The user shall submit a list of any environmental controls permits held by or for the facility;

C. Description of Operation. The user shall submit a brief description of the nature, average rate of production, and

standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the system from the regulated processes.

D. Flow Measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the system from regulated process streams and other streams as necessary to allow use of the combined wastewater formula set out in 40 CFR 403.6 (e).

E. Measurement of Pollutant.

(i) The industrial user shall identify the categorical pretreatment standards applicable to each regulated process;

(ii) In addition, the industrial user shall submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by federal, state or City standards or the Superintendent) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long term average concentrations (or mass, where required by federal, state or City standards or the Superintendent) shall be reported. The sample shall be representative of daily operations and shall be performed in accordance with procedures set out in 40 CFR Part 136.

(iii) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic. All other pollutants shall be measured by composite samples obtained through flow proportional sampling technique. If flow proportional composite sampling is infeasible, samples may be obtained through time proportional sampling techniques or through four (4) grab samples if the user proves such a sample will be representative of the discharge.

F. Special Certification. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operations and maintenance

(O&M) and/or additional pretreatment is required in order to meet the pretreatment standards and requirements; and

G. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 4.6 (14) of this Ordinance.

H. All baseline monitoring reports must be signed and certified in accordance with Section 4.7.

I. Where reports containing this information already have been submitted to the control authority, the industrial user will not be required to submit this information again.

6.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 6.1(G) of this ordinance:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, commencing and completing construction, and beginning and conducting routine operation).

B. No increment referred to above shall exceed nine (9) months.

C. The user shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule.

D. In no event shall more than nine (9) months lapse between such progress reports to the Superintendent.

6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into the municipal (POTW) wastewater system, any user subject to such pretreatment standards and requirements shall submit to the Superintendent a report containing the information described in section 6.1 (1) D-F of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.7 and 6.1(F).

6.4 Periodic Compliance Reports

Any significant industrial users subject to a pretreatment standard shall, at a frequency determined by the Superintendent but in no case less than year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited to such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 4.7.

(1) All wastewater samples must be representative of industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

(2) In the event an industrial user's monitoring results indicate a violation has occurred, the industrial user shall immediately (within 24 hours of becoming aware of the violation) notify the Superintendent and shall re-sample its discharge. The industrial user shall report the results of the repeated sampling within thirty (30) days of discovering the first violation.

6.5 Report of Changed Conditions

Each industrial user shall notify the Superintendent of any planned significant changes to the industrial user's operations or system which

might alter the nature, quality or volume of its wastewater at least 30 days before the change. Notification of any changes in the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12 (p) must also be reported.

(1) The Superintendent may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a waste water permit application under Section 4.6, if necessary.

(2) The Superintendent may issue a wastewater permit under Section 4.8 or modify an existing waste water permit under Section 5.4.

(3) No industrial user shall implement the planned changed condition(s) until and unless the Superintendent has responded to the industrial user's notice.

(4) For purposes of this requirement, flow or loading increases of twenty (20%) or greater and the discharge of any previously unreported pollutant shall be deemed significant.

6.6 Reports of Potential Problems

(1) In the case of an accidental or other discharge which may cause potential problems for the municipal wastewater system, it is the responsibility of the user to immediately telephone and notify the City POTW Superintendent of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(2) Within five (5) days following an accidental discharge, the user shall, unless waived by the Superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the system, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Ordinance.

(3) Failure to notify the City of potential problem discharges shall be deemed a separate violation of this Ordinance.

(4) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the

event of a discharge described in paragraph (1), above. Employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of the emergency notification procedure.

6.7 Reports from Unpermitted Users

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater permit shall provide appropriate reports to the City as the Superintendent may require.

6.8 Sample Collection

Wastewater samples collected for purposes of determining industrial user compliance with pretreatment standards and requirements shall be obtained using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Superintendent may authorize the use of time proportional sampling. Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals shall be obtained using grab collection techniques. All sampling shall be certified that such sampling is representative of normal work cycles and expected pollutant discharges to the POTW.

6.9 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 or, if 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, in accordance with procedures approved by the EPA, DEQ and the City.

6.10 Monitoring Charges

The City Engineer may recover the City's expenses incurred in collecting and analyzing samples of the industrial user's discharge by adding the City's expenses to the industrial user's sewer charges.

6.11 Timing

Written reports shall be deemed to have been transmitted at the time of deposit, postage prepaid, into a mail facility services by the United States Postal Service.

6.12 Record Keeping

Industrial users shall retain, and make available for inspection, and copying, all records and information required to be retained under 40 CFR 403.12(o). These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this Ordinance, or where the industrial user has been specifically notified of a longer retention period by the Superintendent, DEQ or EPA.

6.13 Reporting of Additional Monitoring

If an industrial user subject to the reporting requirements of 40 CFR 403.12(e) or (h), which requires submission of periodic compliance reports, monitors any pollutant more frequently than required by the City, using the procedures prescribed in 40 CFR Part 136, the results of this monitoring shall be included in the report, as required by 40 CFR 403.12(g)(5).

6.14 Notification of Significant Production Change

An industrial user operating under a waste discharge permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Superintendent within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the Superintendent of such anticipated change shall be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

6.15 Notification of the Discharge of Hazardous Waste

(1) Any user who commences the discharge of hazardous waste shall notify the City, the EPA Regional Waste Management Division Director, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the municipal wastewater system, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place

no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 6.5 of this Ordinance. The notification requirement in this Section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 6.1, 6.3, and 6.4 of this Ordinance.

(2) Dischargers are exempt from the requirements of this paragraph (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous waste, unless the wastes are acute hazardous waste as specified in 40 CFR 261.30 (d) and 261.33 (e). Discharge of more than fifteen (15) kilograms of non-acute hazardous waste in a calendar month, or of any quantity of acute hazardous waste as specified in 40 CFR 261.30 (d) and 261.33 (e), requires a one - time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

3) In the case of any new regulations under Section 3001 of the RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Director, the EPA Regional Waste Management Division Director, and DEQ Solid and Hazardous Waste Division Director, of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this Section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued hereunder, or any applicable Federal or State law.

SECTION 7 - COMPLIANCE

7.1 Inspection and Sampling

The City shall have the right to enter the facilities of any industrial user to enforce the provisions of this ordinance or any wastewater permits or orders issued hereunder. Industrial users shall allow the Superintendent or

his representatives ready access to all parts of their premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a user has security measures in force which require proper identification and clearance before entry into their premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City, State, and US EPA will be permitted to enter, without delay, for the purposes of performing their official duties.

(2) The City, State, and US EPA shall have the right to set up or require installation of, on the industrial user's property, such devices as are necessary to conduct sampling, and/or metering of the user's operations.

(3) The City may require the industrial user to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at the industrial user's expense. All devices used to measure wastewater flow and quality shall be calibrated periodically to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or oral request of the Superintendent and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.

(5) Unreasonable delays in allowing City personnel access to the industrial user's premises shall be a violation of this Ordinance.

7.2 Search Warrants

If the Superintendent has been refused access to a building, structure or property or any part thereof, and if the Superintendent has probable cause to believe that there may be a violation to this Ordinance, or that there is a need to inspect as part of a routine inspection program of the city designed to protect the overall public health, safety and welfare of the community, the Superintendent shall contact the City Attorney who may then apply for an administrative search warrant from a court of competent jurisdiction.

SECTION 8 - CONFIDENTIAL INFORMATION

Information and data on an industrial user obtained from reports, questionnaires, permit applications, permits, and monitoring programs, and from City inspections and sampling activities shall be available to the pubic without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State laws.

(1) Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

(2) When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the pubic but shall be made available immediately upon request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) program, and in enforcement proceedings involving the person furnishing the report.

SECTION 9 - PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

The City shall annually publish, in the largest daily newspaper circulated in the area where the municipal wastewater system is located, a list of the industrial users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

(1) Sixty six percent (66%) or more of wastewater measurements taken during a 6 month period exceed the discharge limit for the same pollutant by any amount.

(2) Thirty three percent (33%) or more of wastewater measurements taken during a 6 month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

(3) Any other discharge violation that the City believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel or the general public).

(4) Any discharge of pollutants that has caused imminent

endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge.

(5) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within 30 days after the due date, any required reports, including baseline monitoring reports, 90 day compliance reports, periodic self monitoring reports, and reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation(s) which the City has reason to believe is significant.

SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES

10.1 Industrial User Violation Process

Whenever the Superintendent determines that a violation of this Ordinance, any permit issued hereunder, or any order issued by the City pursuant to this Ordinance, has occurred or is taking place, it may initiate enforcement action as provided in this Section. In addition, any enforcement action or remedy provided in state or federal law may be employed. If the Superintendent believes a violation has occurred or is occurring, a representative of the City shall make a reasonable effort to notify the user of the violation. All violations including the first violation shall receive a written Notice of Violation, and may also incur a monetary penalty.

(1) All written Notices of Violations shall describe the violation and any potential penalty (monetary or additional pretreatment). The written notice may further require that a response to the violation be submitted to the City within a ten (10) day time period.

(2) If a written Notice of Violation requires submittal of a response, the response shall include an explanation of the cause of the violation, a plan for its satisfactory correction and prevention of future such violations, and specific corrective or preventive actions. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of violations occurring before or after receipt of the Notice of Violation. Nothing

in this section shall limit the authority of the Superintendent to initiate emergency action or other enforcement action without first issuing a Notice of Violation.

10.2 Violation

(1) A violation of limitations established under this Ordinance, any applicable federal, state or pretreatment standards, or specific requirements of a discharge permit shall constitute a violation of this Ordinance and shall be cause for enforcement action by the City, including but not limited to levying of administrative penalties as described in Section 10 regardless of the intent of the user. Each day of a continuing violation shall constitute a separate offense for purposes of computing the applicable penalty.

(2) Whenever the Superintendent finds that any IU has violated or is violating this Ordinance, a wastewater permit or order issued hereunder, or any other pretreatment requirement, the Superintendent shall cause to be served upon said IU a written Notice of Violation. The Notice of Violation shall be delivered to the user's premises or be sent by certified mail to the address of the permit holder on record with the City.

10.3 Violation of Permit Parameters

(1) For the maximum daily allowable concentration, if the concentration of any single sample (whether grab or a sample within a series) exceed the limitations, a violation will have occurred.

(2) For the monthly average allowable concentration, if the average of all sample(s) (grab or composite) taken exceeds the limitation, a violation will have occurred. One sample collected may constitute a monthly average violation.

10.4 Additional Violation Parameters

A violation of this Ordinance shall also be deemed to occur:

(1) For noncompliance with any special reporting requirements established by permit, written request of the City, or as specified by general federal pretreatment standards (40 CFR 403.12).

(2) Pollutants prohibited by this Ordinance are discharged into the system.

(3) Failure to apply for and obtain a permit prior to discharge of industrial wastewater into the system.

10.5 IU Notice to City of Violation

If sampling performed by an industrial user indicates a violation, the industrial user shall notify the Superintendent within 24 hours of becoming aware of the violation. The user shall also resample and report the results within 30 days of becoming aware of violation pursuant to 40 CFR 403.12(g)(2). Resampling must continue until it is evident that the discharge is within compliance.

10.6 Consent Orders

The Superintendent may enter into Consent Orders, assurance of voluntary compliance, or other similar documents establishing an agreement with an IU not in compliance with any permit parameter or provision of this Ordinance. such orders will include specific action to be taken by the IU to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as administrative orders and upon issuance, such orders shall be judicially enforceable.

10.7 Show Cause Hearing

The Superintendent may order any user which causes or contributes to violation(s) of this Ordinance, wastewater permits or order issued hereunder or any other pretreatment requirement, to appear before the Superintendent and show cause why a proposed enforcement action should not be taken. Notice shall be served on the IU specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and an order that the IU show cause why this proposed enforcement action should not be taken.

The notice of the hearing shall be served personally or by registered mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears at the hearing, the Superintendent may pursue enforcement action following the hearing date.

10.8 Compliance Orders

When the Superintendent finds that an IU has violated or continues to violate the Ordinance, permits or orders issued hereunder, or any other pretreatment requirement, an order may be issued to the IU directing that, following a specific time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related

appurtenances are installed and properly operated. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer.

In addition to such Compliance Orders, the Superintendent may require additional self-monitoring for at least ninety (90) days after consistent compliance has been achieved, after which time the self-monitoring conditions in the discharge permit shall control.

10.9 Cease and Desist Orders

When the Superintendent finds that an industrial user has violated or continued to violate this Ordinance, any permit or order issued hereunder, or any other pretreatment requirement, the Superintendent may issue an order to the industrial user directing it to cease and desist all such violations and directing the user to:

(1) Immediately comply with all requirements.

(2) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

10.10 Administrative Fines

(1) When the Superintendent finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may fine such user in an amount not to exceed one thousand dollars ($1000.00). Such fines shall be assessed on a per violation, per day basis. In the case of monthly or long term average discharge limits, fines shall be assessed for each day during the period of violation.

(2) Unpaid charges, fines and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of twenty percent (20%) of the unpaid balance, and interest shall accrue thereafter at a rate of seven percent (7%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.

(3) Users desiring to dispute such fines must file a written request for the Superintendent to reconsider the fine along with full payment of the Fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the Superintendent may convene a

hearing on the matter. In the event the users appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Superintendent may add the cost of preparing administrative enforcement actions, such as notices and orders, to the fine.

(4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

10.11 Emergency Suspensions

The Superintendent may immediately suspend an industrial user's discharge and the industrial user's wastewater discharge permit, after informal notice to the industrial user, whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Superintendent may also immediately suspend an industrial user's discharge and the industrial user's wastewater discharge permit, after notice and opportunity to respond, that threatens to interfere with the operation of the municipal waste water system, or which presents or may present an endangerment to the environment.

(1) Any industrial user notified of a suspension of its wastewater permit shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the Superintendent shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the system, its receiving stream, or endangerment to any individuals. The Superintendent shall allow the industrial user to recommence its discharge when the user has demonstrated to the satisfaction of the Superintendent that the period of endangerment has passed, unless the termination proceedings set forth in Section 10.12 are initiated against the user.

(2) An industrial user which is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent prior to the date of any show cause or termination hearing under Section 10.7 and 10.12

10.12 Termination of Permit

In addition to those provisions in Section 5.6 of this Ordinance, any

industrial user which violates the following conditions of this Ordinance, wastewater permits, or orders issued hereunder is subject to permit termination:

(1) Violation of permit conditions.

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge.

(3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.

(4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.

Non-complying industrial users shall be notified of the proposed termination of their wastewater permit and be offered an opportunity to show cause under Section 10.7 of this Ordinance why the proposed action should not be taken.

SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES

11.1 Injunctive Relief.

Whenever an industrial user has violated, threatens to violate, or continues to violate the provisions of this Ordinance, permits or orders issued hereunder, or any other pretreatment requirements, the Superintendent may petition the courts for the issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the wastewater permit, order, or other requirement imposed by this Ordinance on activities of the industrial user. Such other action as may be appropriate for legal and/or equitable relief may also be sought by the City. The Court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

11.2 Civil Penalties

Any industrial user which has violated or continues to violate this Ordinance, any order or permit hereunder, or any other pretreatment requirement shall be liable to the City for a maximum civil penalty of one thousand dollars ($1,000) per violation per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each calendar day during the period of this violation.

A. The court may award reasonable attorney fees, court costs, and other expenses associated with enforcement activities, including

sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

B. In determining the amount of civil penalty, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, corrective actions by the industrial user, economic benefit to the user of noncompliance, the compliance history of the user, and any other factors as justice requires.

C. Where appropriate, the city may accept mitigation projects in lieu of the payment of civil penalties where the project provides a valuable service to the City and the industrial user's expense in undertaking the project is at least one hundred and fifty percent (150%) of the civil penalty.

11.3 Criminal Prosecution

Any industrial user who willfully or negligently violates any provisions of the Ordinance, any orders or permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) per violation per day or imprisonment for not more than (1) one year, or both.

(1) Any industrial user who knowingly makes any false statement, representations or certification in any application, record, report, plan or other documentation filed or required to be maintained pursuant to the Ordinance or wastewater permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) per violation per day or imprisonment for not more than (1) one year, or both.

(2) In the event of a second conviction, the user shall be punishable by a fine not to exceed three thousand dollars ($3,000) per violation per day or imprisonment for not more than (3) three years, or both.

11.4 Remedies Nonexclusive

(1) A City Enforcement Response Plan will be developed by the Superintendent in accordance with 40 CFR section 403.8 and submitted to the City Engineer for approval and certification. The Superintendent will implement the plan after receiving approval

from the City Engineer.

(2) The remedies provided for in this ordinance are not exclusive. The Superintendent may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will be in accordance with the City of Woodburn's Enforcement Response Plan. However the Superintendent may take other action against any user when the circumstances warrant. Further, the Superintendent is empowered to take more than one enforcement action against any noncompliant user.

SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTIONS

12.1 Performance Bonds

The Superintendent may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Ordinance, any orders, or a previous permit issued hereunder unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

12.2 Liability Insurance

The Superintendent may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Ordinance, any orders, or a previous permit issued hereunder, unless the industrial user first submits proof that it has obtained financial assurance sufficient to restore or repair damage to the municipal wastewater system caused by its discharge.

12.3 Water Supply Severance

When an industrial user has violated the provisions of this Ordinance, orders, or permits issued hereunder, water service to the industrial user may be severed by the City Engineer and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

12.4 Public Nuisance

Any violation of the prohibitions or effluent limitations of this Ordinance, permits, or orders issued hereunder is hereby declared a public nuisance and shall be corrected or abated as directed by the City Engineer or his designee. Any person(s) creating a public nuisance shall be subject to the provisions of the City Ordinance 1616 governing such nuisance,

including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

12.5 Contractor Listing

Subject to other applicable law, industrial users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive contract awards for the sale of goods or services to the City.

SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

13.1 Affirmative Defenses

A user shall have those affirmative defenses in any action brought against it alleging a violation as provided by federal regulations.

13.2 Upset

(1) For the purpose of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall be an affirmative defense to an enforcement action brought for noncompliance with categorical pretreatment standards and requirement if the following conditions are met:

(3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

A. The user can identify the cause of the upset.

B. The facility was operating in a prudent and workman-like manner at the time of the upset and was in compliance with applicable O&M procedures; and

C. The user submits the following information to the Superintendent within 24 hours of becoming aware of the upset, If this report is given orally, the user must also submit a written report containing

such information within five (5) days unless waived by the Superintendent:

i) A description of the discharge and its causes of noncompliance;

ii) The period of noncompliance including exact dates and time or, if not corrected, the anticipated time the noncompliance is expected to continue;

iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have burden of proof.

(5) Users will have the opportunity for judicial determination on any claim of upset only in an enforcement action for noncompliance with categorical pretreatment standards.

(6) User shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.3 General/Specific Prohibitions

An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Section 2.1 first paragraph of this Ordinance or the specific prohibitions in Sections 2.1 (2-3), (5-11), (13-20) of this ordinance if it can

prove that it did not know or have reasons to know that its discharge, alone or in conjunction with discharges from other sources would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to and during the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, in compliance with applicable sludge use or disposal requirements.

13.4 Bypass

(1) For the purposes of this section,

A. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.

B. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (A), (B) and (C) of this section.

A. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass, if possible.

B. A user shall submit oral notice to the superintendent of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a

description of the bypass and its cause; the duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

C. Bypass is prohibited, and the Superintendent may take an enforcement action against a user for bypass, unless

i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii) There were no feasible alternatives to the bypass, such

as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii) The user submitted notices required under paragraph (3) of this section.

D. The Superintendent may approve an anticipated bypass, after considering its adverse effects, if the Superintendent determines that it will meet the three conditions listed in paragraph (4) (A) of this section.

SECTION 14 - MISCELLANEOUS PROVISIONS

14.1 Pretreatment Charges and Fees

The City may adopt reasonable charges and fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

(1) Fees for permit applications including the cost of processing such applications;

(2) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by

industrial users;

(3) Fees for reviewing and responding to accidental discharge procedures and construction;

(4) Fees for filing appeals;

(5) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines and penalties chargeable by the City.

14.2 Severability

If any provision of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall

continue in full force and effect.

14.3 Conflicts with other Ordinances

To the extent that an inconsistency exists between the terms of this ordinance and another existing ordinance, this ordinance shall be deemed to preempt the other ordinance and the terms of this ordinance shall control.

14.4 Emergency Clause

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council September 9, 1996 and approved by the Mayor September 10, 1996.

ORDINANCE NO. 2242

AN ORDINANCE PROVIDING FOR CROSS CONNECTION CONTROL AND BACKFLOW PREVENTION PROCEDURES; COMPLYING WITH OREGON ADMINISTRATIVE RULES 333-61-0070; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. This ordinance shall be known as the "City of Woodburn Cross Connection Control and Backflow Prevention Ordinance".

Section 2. Policy and Purpose. As required by the Oregon Health Division, pursuant to Oregon Administrative Rules 333-61-0070, and in order to prevent any possibility of backflow contaminating the water system, it shall be the policy of the City of Woodburn to require the installation of backflow prevention devices, and inspections of those devices, as set forth in this ordinance. The City of Woodburn shall also administratively implement a local cross connection program as further specified in the Oregon Administrative Rules and the City of Woodburn Cross Connection Implementation Manual.

Section 3. Definitions. The words and phrases used in this ordinance shall have the meaning provided in Oregon Administrative Rules 333-061-0020.

Section 4. Records and Reports. The City shall maintain current records of backflow assemblies installed, inspections completed, and backflow assembly test results, and shall report such data as may be required by State law.

Section 5. Discontinuance of Service for Violations of Policy.

A. After proper notice to the customer as required by this ordinance, and until the violation has been corrected, the City shall discontinue water service to any premises under any of the following circumstances:

(1) For failure to install an approved backflow prevention device;

(2) For failure to conduct an annual test on the backflow device;

(3) When the City has reasonable cause to believe that an existing or potential cross connection is located on the user's premises, until an appropriate backflow prevention assembly is installed or until the cause of the hazard is eliminated.

(4) For any other violation of this ordinance.

B. This section shall not in any way be construed to impair the City's ability to immediately discontinue water service in the event of imminent threat to the City's water system or other emergency situations.

Section 6. Backflow Prevention; When Required.

A. Backflow prevention assemblies shall be installed at the service connection to premises where an approved airgap does not exist and:

(1) There is an auxiliary water supply which is, or can be, connected to the potable water piping; or

(2) There is piping for conveying liquids other than potable water, and where that piping is under pressure and is installed in proximity to potable water piping; or

(3) There is intricate plumbing which makes it impractical to ascertain whether or not cross connections exist; or

(4) There is backsiphonage potential; or

(5) Cross connections or potential cross connections exist.

Section 7. <u>Approved Devices and Installation Thereof; Required Methods of Backflow Prevention.</u>

A. New Assemblies**.** All backflow prevention assemblies required under this ordinance shall be of a type and model approved by the Oregon Health Division, and shall be installed in accordance with Oregon Administrative Rules 333-61-0071 Sections (1) through (4), as now existing or later amended. Suitable pressure-relief devices to prevent damage from thermal expansion shall be required in conjunction with the installation of all new backflow prevention assemblies.

B. Existing Assemblies. Backflow prevention assemblies installed before the adoption of this ordinance and which were approved by the Oregon Health Division at the time they were installed, but are not on the current list of approved assemblies, shall be permitted to remain in service provided they are properly maintained, are commensurate with the degree of hazard, are tested at least annually, and perform satisfactorily. When assemblies of this type are moved, or require more than minimum maintenance or are on services that are modified, changed size or remodeled, they shall be replaced by assemblies which are on the Oregon Health Division list of approved assemblies.

C. Required Backflow Prevention Methods. The method of backflow prevention required under this ordinance shall at a minimum be commensurate with the degree of hazard which exists, and not less than the following:

(1) When the substance which could backflow could be hazardous to health, an approved air gap of at least twice the inside diameter, but not less than one inch, of the incoming supply line measured vertically above the top rim of the vessel shall be installed, or an approved reduced pressure backflow (RPBA) assembly shall be installed.

(2) When the substance which could backflow is objectionable but does not pose an unreasonable risk to health, an approved double check valve

assembly (DCVA) shall be installed. An approved double check valve assembly shall be the minimum protection for fire sprinkler systems using piping material that is not approved for potable water use and /or which does not provide for periodic flow through during each 24 hour period.

(3) An approved pressure vacuum breaker assembly (PVBA) or an atmospheric vacuum breaker (AVB) 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 backpressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker but shall not be installed downstream of an atmospheric vacuum breaker.

Section 8. Testing Required.

A. When Required. The water user or the owner of the premises where one or more reduced pressure assembly (RPBA), double check valve assembly (DCVA), or pressure vacuum breaker (PVBA) have been installed shall have the assemblies tested by a certified tester at least once per year. Assemblies installed at facilities which pose an extreme health risk and assemblies which repeatedly fail shall be tested on a more frequent basis as determined by the City. Backflow assemblies which have been moved or which have been installed shall be tested before use.

B. Malfunctioning Assemblies. Backflow prevention assemblies found not to be functioning properly shall be promptly repaired by the owner or water user, and failure to do so may result in the denial or discontinuance of service as provided in this ordinance.

C. Test Procedures and Reports. Tests performed by certified testers shall be in conformance with procedures adopted under OAR 333-061-0070 (10), as now existing or later amended. Reports on the tests shall be prepared by the certified tester and copies shall be provided to the City and to the water user or owner of the premises.

Section 9. Administrative Subsidy Program. Consistent with the terms of this ordinance and subject to the City budget, the City Engineer may authorize administrative subsidies for the installation of required backflow prevention devices after a finding that such installation will protect the City water system and will benefit the public interest.

Section 10. Severability. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section 11. [Emergency clause.]

Passed by the Council and approved by the Mayor August 24, 1999.

ORDINANCE NO. 1187

AN ORDINANCE DEFINING, REGULATING, AND LICENSING SOLICITORS AND PEDDLERS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. **Permit and License Required**. It shall be unlawful for any person to engage in business as a peddler or solicitor, as defined in this ordinance, within the corporate limits of the city of Woodburn, without first obtaining a license as herein provided.

Section 2. **Definitions**.

(a) Person shall include the singular, plural, firm, corporation, association, partnership, society, or other organization.

(b) Peddler includes any person traveling by any means from place to place, house to house, or street to street offering or exposing goods, wares, merchandise, or services for sale, or making sales, and delivering articles to purchasers.

(c) Solicitor includes any person traveling by any means from place to place, house to house, or street to street taking or attempting to take orders for sale of goods, wares, merchandise, or services for future delivery or to be furnished in the future, regardless of the method of payment.

(d) Exemptions. The terms of this ordinance shall not be held to include the acts of persons selling personal property at wholesale to dealers in such articles, nor to newsboys, nor the acts of local merchants or their employees in delivering goods in the regular course of business, nor shall the terms of this ordinance be held to include or apply to any farmer or truck gardener who shall vend, sell, or dispose of, or offer to sell, vend, or dispose of the products of the farm or garden occupied and cultivated by him within the state of Oregon. Nothing contained in this ordinance shall be held to prohibit any sale required by statute or by order of any court, or to prevent any person from conducting a bona fide auction sale pursuant to law.

(e) Nonprofit organizations, religious organizations, fraternal organizations, civic organizations, and clubs, wishing to canvass for funds, or sell from door to door, to an occupant or occupants of residences, to raise funds to be used solely for the purpose for which the organization or club is created, and from which no individual third party receives a profit, shall, in lieu of all other application and licensing provisions of this ordinance, apply to the council for a permit, which application shall contain such information as the city recorder may require, or is demanded by the council; and the council may, after an investigation as to the purpose of the project and the use to which the funds so raised are to be put, reject the application or approve it and direct the permit be issued. It shall be and is hereby declared to be a violation of this

ordinance for any person or party to canvass for funds or sales for any such organization or club from door to door of the occupant or occupants of residences until the council has approved the application and the permit has been issued. Such permit shall be issued without charge to the applicant.

Section 3. Applications.

(a) A person desiring to be licensed under this ordinance must file with the city recorder a sworn application, in writing, on a form to be furnished by the city recorder, which shall give the following information and material:

(1) The name and description of the applicant.

(2) The permanent address of the applicant and, if this is not a local address, the local address, if any, to be used by the applicant.

(3) A brief description of the nature of business and the goods or services to be sold. In the case of products of farms or orchards, a statement whether the produce to be sold is grown by the applicant.

(4) If the applicant is employed, the name and address of the employer, together with credentials establishing an exact relationship.

(5) A photograph or snapshot of the applicant shall have been taken within 60 days immediately prior to the date of the filing of the application, showing the head and shoulders of the applicant in a clear and distinguishing manner.

(6) The fingerprints of the applicant.

(7) The names of at least two reliable persons who will vouch for the applicant's good character and the business he represents.

(b) At the time of filing the application, a fee of $25.00 shall be paid to the city recorder to cover the cost of investigation. [Subsection (b) as amended by Ordinance No. 1624, passed June 26, 1978.]

Section 4. Investigation and Issuance.

(a) Upon receipt of an application, the same shall be referred to the chief of police, who shall cause investigation of the applicant's business and moral character to be made as shall be deemed necessary for the protection of the public interest.

(b) The chief of police, within five days from the date of the application, shall endorse the application as "satisfactory" or " unsatisfactory" and, if the same shall be endorsed "unsatisfactory;" the reason for such endorsement shall be set forth thereon. If the application is not returned to the city recorder within five days, the endorsement shall be presumed to be "satisfactory."

(c) Where the application is endorsed "satisfactory," or if five days shall have elapsed without the return of the application by the chief of police, the city recorder shall issue a license card to the applicant for the conduct of the activity for which application was made. Such license shall contain the signature and seal of the issuing officer and shall show the name, address, and photograph or snapshot of the licensee, the kind and goods to be sold thereunder, the date of issuance and the expiration date of the license. The city recorder shall keep a permanent record of all licenses for a period of two years from the date of issuance.

(d) If the application is returned from the chief of police endorsed "unsatisfactory," the city recorder shall notify the applicant that his application has been disapproved and the reasons therefor.

Section 5. **Crew Licenses and Bonds**. In lieu of an application being filed by each solicitor or peddler, the employer of any solicitors or peddlers may file separate applications for each solicitor or peddler employed by him and, upon satisfactory compliance with the requirements of this section and the payment of the license fee prescribed by Section 6 of this ordinance for each member of the crew, a crew license shall be issued to the employer designating the name of the employer and the solicitors or peddlers named in the application; and separate licenses or identification cards may be issued to each solicitor or peddler. The employer may make substitutions of solicitors or peddlers or add additional solicitors or peddlers from time to time within the limits of such crew license, and, upon filing an appropriate application as aforesaid, may have the city recorder transfer such licenses or identification cards from one solicitor or peddler employed by him to another so employed without paying any additional license fee. The city recorder may, in his discretion, in lieu of an investigation and the payment of an application fee, accept a corporate surety bond satisfactory to the city attorney in the sum of $1,000.00, conditioned upon:

(a) The observance by the applicant of the provisions of Sections 1, 8, 9, 10, 12 and 14 of this ordinance and all laws of the state of Oregon.

(b) The truth of all representations made in connection with the application for a license.

(c) A guarantee that the person named in the bond will return the purchase price of any article or service purchased or ordered to the purchaser or person ordering upon return of the article purchased or relinquishment of the order and upon proof that any false or misleading statement or representation has been made concerning any personal property or any service or any subscription sold or offered for sale to said purchaser or person ordering. In the instance of a crew license, the employer may, instead of filling a separate bond for each peddler or solicitor, file one bond in a sum equal to $2,000.00.

Section 6. **License Fee.**

(a) All peddlers and solicitors shall pay an annual license fee of $15.00. Licenses may be renewed on an annual basis upon payment of the license fee.

(b) All licenses shall run from January 1 to December 31, inclusive. One-half of the annual license fee shall be charged for licenses issued after July 1. [Section 6 as amended by Ordinance No. 1618, passed June 13, 1978.]

Section 7. **Transfer**. No license shall be used at any time by any person other than the one to whom it is issued, unless it shall have been transferred pursuant to Section 5 of this ordinance.

Section 8. **Exhibition of License**. Peddlers and solicitors are required to exhibit their license cards at the request of any citizen.

Section 9. **Posting Premises**. Any resident of the city of Woodburn who wishes to exclude peddlers and solicitors from residence premises occupied by him may place upon or near the usual entrance to such premises a printed placard or sign bearing the words "Peddlers and Solicitors Prohibited," or other similar notice. Such notice shall be reasonably visible with normal eyesight for a distance of four feet. Any peddler or solicitor who goes into or approaches within four feet of such posted notice upon a private residence property in the city of Woodburn that has been duly posted pursuant to this section for the purpose of soliciting orders for the sale of goods, services, wares or merchandise or for the purpose of disposing of or hawking the same shall be in violation of this ordinance.

Section 10. **Duties of Police to Enforce**. It shall be the duty of any police officer of the city of Woodburn to require any person seen peddling or soliciting and who is not known by such officer to be duly licensed to produce his license card and to enforce the provisions of this ordinance against any person found to be violating the same.

Section 11. **Revocation of License**.

(a) Licenses may be revoked by the city recorder, after notice of hearing for any of the following causes:

(1) Fraud or misrepresentation or false statement contained in an application for license.

(2) Fraud or misrepresentation or false statement made in the course of carrying on the business as peddler or solicitor.

(3) Any violation of this ordinance.

(4) Conviction of any crime or misdemeanor involving moral turpitude.

(5) Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

(b) Notice of hearing for revocation of a license shall be given in writing setting forth the grounds of the complaint and the time and place for hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing.

Section 12. Appeal. Any person aggrieved by the action of the chief of police or the city recorder in denial or revocation of his license shall have the right to appeal to the council of the city or Woodburn. Such appeal shall be taken by filing with the council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The council shall set a time and place for the hearing of such appeal and notice of such hearing shall be given to the appellant in the same manner as notice of revocation. The decision and order of the council on such appeal shall be final and conclusive.

Section 13. Selling by Public Outcry. Hawking or selling display goods on the public streets in the city of Woodburn by public outcry is hereby specifically prohibited; except that this section shall not apply to special promotional sales when such sales have been requested by or through the chamber of commerce and have been approved by the common council.

Section 14. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause, or phrase of this ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance and they shall remain in effect.

Section 15. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 4 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 15 as amended by Ordinance 2008, passed October 24, 1988.]

Section 16. Repealing Clause. That portion of Section 1, Ordinance No. 892, relating to license fees for "Vending and peddling from house to house except products produced from premises owned or operated by such vendor or peddler" is hereby repealed.

Passed by the Council and approved by the Mayor February 18, 1969.

ORDINANCE NO. 1900

AN ORDINANCE DESCRIBING CERTAIN MUNICIPAL VIOLATIONS, PROVIDING PENALTIES, REPEALING ORDINANCE NO. 1887, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Drinking in Public Places**. No person shall drink or consume alcoholic liquor in or on a street, alley, mall, parking lot, or structure, motor vehicle, public grounds or other public place unless the place has been licensed for that purpose by the Oregon Liquor Control Commission.

Section 2. **Public Indecency**. No person shall, while in or in view of a public place, perform an act of urination or defecation, except in toilets provided for that purpose. [Section 2 amended by Ordinance No. 1938, passed February 10, 1986.]

Section 3. (Section 3 repealed by Ordinance 2312)

Section 4. **Children Confined in Vehicles.**

(1) No person who has under his control or guidance a child under 10 years of age shall lock or confine, or leave the child unattended, or permit the child to be locked or confined or left unattended in a vehicle for a period of time longer than 15 consecutive minutes.

(2) A peace officer, finding a child confined in violation of subsection (1) shall have the authority to enter the vehicle and remove said child using such force as is reasonably necessary to effect an entrance to the vehicle.

Section 5. **Discharge of Weapons**.

(1) Except at firing ranges approved by the Chief of Police, no person other than a peace officer shall fire or discharge a gun, including spring or air-activated pellet guns, air guns or BB guns, firearm or other weapon which propels a projectile by use of gun powder or other explosive, jet or rocket propulsion.

(2) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(3) Notwithstanding subsection 1 of this section, the City Council may approve or deny applications for the ceremonial discharge of a firearm or firearms when blank ammunition is used. Applications for the ceremonial discharge of firearms shall be make to the Chief of Police according to an administrative procedure established by the Police Department. The denial of an application may be appealed to the City Council. (Section 5 as amended by Ordinance No. 2274, passed November 13, 2000.]

Section 6. **Obstructing a Peace Officer**. No person shall, by use of violence, force, physical interference, or obstacle, intentionally obstruct, impair, or hinder the enforcement of the law by a peace officer acting within the scope of the officer's official authority. [Section 6 added by Ordinance No. 1909, passed February 25, 1985.]

(Sections 7 to 14 reserved for expansion)

Section 15. **Penalties**. A person who violates any section of this ordinance commits a violation punishable by a fine of not more than $250.00.

Section 16. **Severability**. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or validity of any portion of this ordinance shall not invalidate the remainder of the ordinance.

Section 17. **Repeal and Saving Clause.**

(1) Ordinance No. 1887 is hereby repealed.

(2) Notwithstanding subsection (1) of this section, Ordinance No. 1887 shall remain valid and in force for the purpose of authorizing the arrest, prosecution, conviction and punishment of a person who violated Ordinance No. 1887 prior to the effective date of this ordinance.

Section 18. [Emergency clause.]

Passed by the Council October 8, 1984, and approved by the Mayor October 9, 1984. Amended by Ordinance 2312 passed April 8, 2002.

ORDINANCE NO. 2474

AN ORDINANCE UPDATING THE STATUTORY REFERENCES CONTAINED IN THE CITY OF WOODBURN'S EXISTING LOCAL SOCIAL GAME DETERMINATION MADE PURSUANT TO STATE LAW; REPEALING ORDINANCE 1996; AND DECLARING AN EMERGENCY

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Gambling Prohibited. Except as provided in this Ordinance, gambling is prohibited in the City of Woodburn pursuant to the provisions of the Oregon Criminal Code.

Section 2. Social Game Permitted in Private Home. Pursuant to ORS 167.121, a "social game" as defined in ORS 167.117 (21) (a) is permitted in the City of Woodburn.

Section 3. Social Game Prohibited in Private Business, Private Club or Place of Public Accommodation. . Pursuant to ORS 167.121, a "social game" as defined in ORS 167.117 (21) (b) is prohibited in the City of Woodburn.

Section 4. Severability. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of this ordinance.

Section 5. Ordinance 1996 is hereby repealed.

Section 6. [Emergency Clause.]

Passed by the Council January 24, 2011, and approved by the Mayor January 26, 2011.

ORDINANCE NO. 2032

AN ORDINANCE DESCRIBING MUNICIPAL OFFENSES, PROVIDING PENALTIES, REPEALING ORDINANCE 1987 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Adoption of the Oregon Criminal Code**. The Oregon Criminal code (hereinafter ORS 133.075, ORS Chapter 475, and ORS Chapters 161, 162, 163, 164, 165, 166, and 167, as it is now constituted) is hereby adopted by the City of Woodburn. Provisions of the above-mentioned chapters relating to defenses, burden of proof, general principles of criminal liability, parties, and general principles of justification apply to offenses defined and made punishable by this ordinance.

Section 2. **Violation of code as City Offense**. Violation of any provision adopted in section 1 of this ordinance, except where an offense is classified under state law as a felony or where a court other than a municipal court is vested with exclusive jurisdiction, constitutes a municipal offense against the City of Woodburn.

Section 3. **Jurisdiction of the Municipal Court**. The Woodburn Municipal Judge, pursuant to the Woodburn City Charter, Oregon law and the home rule authority of the City of Woodburn, is given original and exclusive jurisdiction over any alleged violation of this ordinance.

Section 4 **Penalty for Violation**. Upon finding that an offense has been committed under this ordinance, the Woodburn Municipal Judge shall impose a penalty not to exceed the penalty provided by state law as it is now constituted.

Section 5. **Severability**. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of this ordinance.

Section 6. **Repeal and Saving Clause**.

(1) Ordinance 1987, as amended, is hereby repealed.

(2) Notwithstanding subsection (1) of this section, Ordinance No. 1987 shall remain valid and in force for the purpose of authorizing the arrest, prosecution, conviction, and punishment of a person who violated Ordinance No. 1987 prior to the effective date of this ordinance.

Section 7. [Emergency clause.]

Passed by the Council November 13, 1989 and approved by the Mayor November 15, 1989.

ORDINANCE NO. 2048

AN ORDINANCE PROHIBITING UNLAWFUL PROSTITUTION PROCUREMENT ACTIVITIES AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions**. As used in this ordinance, "prostitution" means that unlawful conduct defined in ORS 167.007. As used in this ordinance, "prostitution procurement activity" means any conduct by any person that constitutes a substantial step in furtherance of an act of prostitution. Such activity includes, but is not limited to lingering in or near any street or public place, repeatedly circling an area in a motor vehicle or repeatedly beckoning to, contacting, or attempting to stop pedestrians or motor vehicle operators.

Section 2. **Prostitution Procurement Activity**. It is unlawful for any person to engage in any prostitution procurement activity with an intent to induce, entice, solicit, procure, locate, or contact another person to commit an act of prostitution.

Section 3. **Penalty**. Violation of this ordinance is punishable, upon conviction, by a fine of not more than $500.00 or by imprisonment not exceeding six months, or both. However, no greater penalty shall be imposed than the penalty prescribed by Oregon statute for the same act or omission.

Section 4. [Emergency clause.]

Passed by the Council November 7, 1990 and approved by the Mayor November 9, 1990.

ORDINANCE NO. 2049

AN ORDINANCE PROHIBITING LOITERING TO SOLICIT PROSTITUTION AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definition of prostitution**. As used in this ordinance, "prostitution" means engaging in, offering to engage in, or agreeing to engage in an act of sexual conduct or sexual contact as those terms are defined in ORS 167.002(4) and (5), with a person not married to the actor, in return for the payment of a fee.

Section 2. **Loitering to solicit prostitution prohibited**. It is unlawful for any person to loiter in or near any street or public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested are that the person repeatedly beckons to, stops or attempts to stop, or engages in conversation, passersby or repeatedly stops or attempts to stop motor vehicle operators by hailing them or gesturing to them.

Section 3. **Penalty for Violation**. Violation of this ordinance is punishable, upon conviction, by a fine of not more than $500.00, or by imprisonment not exceeding six months, or both. However, no greater penalty shall be imposed than the penalty prescribed by Oregon statute for the same act or omission.

Section 4. [Emergency clause.]

Passed by the Council November 7, 1990 and approved by the Mayor November 9, 1990.

ORDINANCE NO. 2060

AN ORDINANCE RELATING TO THE USE OF PARK AREAS: PROVIDING FOR PENALTIES FOR VIOLATION THEREOF; REPEALING ORDINANCE 1918 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Policy**. The City of Woodburn may develop, construct, improve, operate and maintain park and recreation facilities in a manner which will best afford the public with necessary conveniences and accommodations. In order to protect the health, safety and well-being of the public, and insure the greatest use and benefits from such areas, it is necessary to make regulations and provisions the City Council deems necessary.

Section 2. **Definitions**

(1) Board. The Woodburn Recreation and Parks Board.

(2) Council. The Woodburn City Council.

(3) Director. The person hired by the City of Woodburn who is in charge of the Community Services Department of the City of Woodburn or his designee.

[Section 2 (3) as amended by Ordinance 2412, passed November 13, 2006.]

(4) Park Area. A City Park, wayside area, community rest areas, scenic or historical areas, public park open spaces and greenbelt areas.

(5) Park Employee. Any employee of the City of Woodburn Community Services Department.

[Section 2 (5) as amended by Ordinance 2412, passed November 13, 2006.]

(6) Person. A natural person, firm, partnership, association, or corporation.

Section 3. **General Rules and Regulations**. The general rules and regulations for City of Woodburn Parks shall be as follows:

(1) Fires in park areas:

No person shall build a fire in any park area unless said fire is confined to:

(a) Park camp stoves or fireplaces.

(b) Portions of parks designated as permitting fires.

(c) Portable stoves in established picnic areas and designated where fires are permitted.

(d) No fire shall be left unattended, and every fire shall be extinguished before its user leaves the park area.

(2) No person in a park area shall hunt, pursue, trap, kill, injure or molest any birds or animals or disturb their habitat. [Section 3(2) as amended by Ordinance 2083, passed May 26, 1992.]

(3) No person shall pick, cut, mutilate or remove from any park area flowers, shrubs, foliage, trees, plant life, barkdust, or products of any type without the written permission of the Director or his authorized agent.

(4) No person shall, except in areas designated by City Council, erect signs, markers, or inscriptions of any type within a park area without permission from the Director.

(5) No person in a park area shall sell, peddle or offer for sale any food liquids, edibles for human consumptions, or any goods, wares, service or merchandise within the park area except under permit by the Director, and then only subject to such laws and regulations as may now or hereafter exist.

(6) No person shall, except duly authorized peace officers in the course of their duties, drive, lead or keep a horse or other farm animal in any park area, except on such roads, trails or other areas designated for that purpose. No horse or such animal shall be hitched to any tree or shrub in such manner that may cause damage to such tree or shrub. The only exception to this rule would be during a parade line-up or a special event, and only after obtaining written permission from The Director.

(7) No person shall wash any clothing, or materials or other substances, or clean any fish in a park area or in a lake, stream or river, or in a park area. Park sinks, faucets and hydrants within the confines of parks or park restrooms shall not to be used for washing clothes of any type.

(8) No person shall use park sinks, other than those provided in public restrooms, for personal hygiene. Faucets, drinking fountains, hose outlets and hydrants shall not be used for this purpose.

(9) No person shall clog picnic shelter sinks in a park area with food, debris, grease or any other substances

(10) No person shall camp in a park area except by written approval of the Director.

(11) The Director may restrict to designated zone areas certain activities, including but not limited to, swimming, picnicking, group picnicking, boating, water skiing, fishing, camping, group camping, hiking and horseback riding.

(12) No person shall enter or remain in a park area anytime between the hours of 10:00 p.m. and 7:00 a.m. the following morning during April 1 through September 30 of the calendar year, or between the hours of 7:00 p.m. and 7:00 a.m. the following morning during October 1 through March 31 of the calendar year. This section shall not apply to:

(a) Persons attending an event for which a permit has been issued.

b) Participants or spectators of athletic events in park areas lighted for these events; or

(c) Persons attending events sponsored by the City.

[Section 3(12) as amended by Ordinance 2083, passed May 26, 1992.]

(13) No person shall have in their possession, any alcoholic beverages or intoxicating liquor, or consume such liquor while in a park area except that the use of alcoholic beverages may be permitted in Centennial Park in compliance with a Special Event Park Use Permit where the city has issued the permit and the premises have been licensed for the service of alcoholic beverages by the Oregon Liquor Control Commission.

[Section 3(13) as amended by Ordinance 2083, passed May 26, 1992 and by Ordinance 2321, passed July 8, 2002.]

(14) Nothing in this ordinance shall in any manner restrict the authority of the City of Woodburn to enforce all State statutes and City Ordinances relating to the use and control of alcoholic beverages.

(15) The Director, any Park employee, Code Enforcement officer, or member of the Woodburn Police Department is authorized to issue a civil infraction citation for a violation of this ordinance.

(16) The Council, City Administrator or The Director shall have the authority to close a park area or a portion of a park area to the public at any time and without notice for any reasonable and necessary circumstance including, but not limited to, construction and maintenance in the park area and for the existence of a hazardous condition.

Section 4. **Fees**. Fees may be charged for certain services and privileges, and for the use of designated areas, buildings or facilities. No person shall enter or use such areas, buildings, services or facilities or to be granted those privileges unless the appropriate fee or fees have been paid.

Section 5. **Rules of Conduct**. The Community Services Department may adopt administrative rules for the conduct of persons participating in City Programs in the park areas, the Aquatic Center, or the Community Center. All persons participating in City Programs shall be registered. The Rules of Conduct shall be administered by the Director, or a park employee.

[Section 5 as amended by Ordinance 2412, passed November 13, 2006.]

Section 6. Animals.

(1) Persons owning, keeping or harboring a dog within a park area are responsible for the dog's behavior and shall comply with the following regulations:

(a) A dog shall be on a leash not more than (8) feet in length, or confined in a vehicle at all times, except dogs in off-leash dog areas designated by the City Administrator or the City Administrator's designee.

(b) Any dog found by the Municipal Judge to be a dangerous dog pursuant to Ordinance 2434 (the Animal Control Ordinance) shall not be permitted.

(c) A dog may not deposit solid waste matter on any improved park property unless the person owning, keeping, or harboring the dog immediately removes the solid waste.

(2) The Director or a park employee may require a person in charge of any animal to undertake any measure, including the removal of an animal from the park area to prevent interference by the animal with the safety, comfort or well being of park area visitors or resources.

(3) No farm animal, including, but not limited to, horses, cattle, sheep and goats is allowed in a park area except by permission of the Director.

[Section 6 as amended by Ordinance 2472, passed September 27, 2010.]

Section 7. Glass Beverage Containers. Except by written authorization from the Director or designated park employee, no person shall possess a beverage container made of glass in any park area.

Section 8. Additional Prohibited Activities. In addition to any other prohibitions in this ordinance, no person in a park area shall:

(1) Set or use a public address system without the written permission of the Director.

(2) Operate or use any noise producing device in a manner that disturbs other park visitors.

(3) Use a metal detector without the written permission of the Director.

(4) Play sports or engage in other recreational activities in areas designated by the Director as unavailable for those activities.

(5) Over crowd persons or vehicles so that necessary access to emergency vehicles is unavailable. Vehicles improperly parked will be towed at owners expense.

Section 9. **Penalty**. Any violation of this Ordinance constitutes a class 4 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998.

Section 9A. **Enhanced Penalty for Violation of Special Park Use Permit**. Notwithstanding Section 9 of this Ordinance, which provides that a violation of the park rules established by this Ordinance constitutes a class 4 civil infraction, any violation of the terms and conditions of a Special Event Park Use Permit by the permittee shall constitute a class 1 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998, the civil infraction ordinance.
(Section 9A added by Ordinance 2321, passed July 8, 2002.)

Section 9B. In addition to other measures provided for violation of this Ordinance, or any of the laws of the State of Oregon, any peace officer, as defined by ORS 133.005(3), as amended, or any City of Woodburn park or parks maintenance official or employee designated by the City Administrator, may exclude any person who violates any provision of this Ordinance, any City ordinance, any of the laws of the State of Oregon, or any rule or regulation duly made and issued by the Community Services Department or the City Council from any City park for a period of not more than 30 days.

[Section 9B as amended by Ordinance 2412, passed November 13, 2006.]

(1) No person shall enter or remain in a City park at any time that a Notice of Exclusion issued under this Ordinance excluding that person from that City park is in effect

(2) An exclusion issued under the provisions of this Ordinance shall be for thirty (30) days. If the person to be excluded has been excluded from any park at any time, within two years before the date of the present exclusion, the exclusion shall be for ninety (90) days. If the person to be excluded has been excluded from one or more parks on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for one-hundred eighty (180) days.

(3) Before issuing a Notice of Exclusion under this Ordinance the issuing officer shall first give the person a warning and a reasonable opportunity to desist from the violation. A Notice of Exclusion shall not be issued if the person promptly complies with the warning and desists from the violation. No warning shall be required if the person is to be excluded for committing any act punishable as a felony, or involving controlled substances or alcoholic beverages, or which has resulted in injury to any person or damage to any property. Further, no warning shall be required if the person to be excluded has been warned or excluded from the park previously for engaging in the same unlawful conduct.

(4) A Notice of Exclusion under this Ordinance shall specify the date the exclusion is to commence, the term of the exclusion, the City park that the person is to be excluded from, the provision of law that the person violated, and a brief description of the offending conduct. It shall be signed by the issuing party. The Notice of Exclusion shall provide information concerning the right to appeal the notice and to

apply for a temporary waiver from the effects of the notice warning of consequences for failure to comply shall be prominently displayed on the notice.

(5) Notices of Exclusion shall take effect immediately except that if a timely appeal is filed under this Ordinance, the effectiveness of the exclusion shall be stayed pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of the exclusion shall become effective immediately upon issuance of the Woodburn Municipal Court decision, unless the Court sets a later effective date.

(6) A person receiving a Notice of Exclusion may appeal to the Woodburn Municipal Court to have the notice rescinded or the exclusion period shortened. In order to be timely, an appeal must be filed within five (5) days of receipt of the Notice of Exclusion.

(a) The appeal need not be in any particular form, but should substantially comply with the following requirements:

(i) Be in writing
(ii) Identify the date, time, and place of the exclusion
(iii) Identify the name and address of the appealing party
(iv) Identify the official who issued the exclusion
(v) Contain a concise statement as to why the Notice of Exclusion was issued in error

(b) A copy of the appeal shall be served on the City Attorney.

(c) An appeal hearing shall be conducted by the Woodburn Municipal Court and a decision on the appeal shall be made by the Court within ten (10) days after the appeal is filed.

(d) At the appeal hearing the City and any interested parties shall have the right to present evidence and witnesses and be heard. After due consideration of pertinent information and testimony the Court shall issue a written decision. The decision of the Court shall be final.

(7) *At any time within the exclusion period, a person receiving a Notice of Exclusion may apply in writing to the City Administrator for a temporary waiver from the effects of the notice for good cause shown. In exercising discretion under this section, the City Administrator shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the park during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the City Administrator determines to be relevant to the determination of whether or not to grant a waiver. The decision of the City Administrator to grant or deny, in whole or in part, a waiver under this section is committed to the discretion of the City Administrator, and is not subject to appeal or review.*

(Section 9B added by Ordinance 2342, passed July 28, 2003; amended by Ordinance 2377, passed November 8, 2004.)

Section 10. **Severability**. Each portion of this Ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this Ordinance shall not invalidate the remainder of the Ordinance.

Section 11. **Repeal and Saving Clause**.

(1) Ordinance No. 1918 is hereby repealed.

(2) Notwithstanding Subsection (1) of this Section, Ordinance No. 1918 shall remain valid and in force for the purpose of authorizing arrest, prosecution, conviction and punishment of a person who violated Ordinance No. 1918 prior to the effective date of this Ordinance.

Section 12. [Emergency clause.]

Passed by the Council April 22, 1991 and approved by the Mayor April 23, 1991.

ORDINANCE NO. 2122

AN ORDINANCE SETTING TIMES FOR JUVENILE CURFEWS, PROVIDING FOR PENALTIES AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Curfew.** No minor under the age of 18 years shall be in or upon any street, highway, park, alley, or other public place between the hours specified in Section 2, unless:

(a) Such minor is accompanied by a parent, guardian or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(b) Such minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public place during the hours specified in this Ordinance, or

(c) The minor is emancipated pursuant to ORS 419B.550 to 419B.558.

Section 2. **Hours of Curfew.** For minors under the age of 16 years, the curfew is between 10:00 p.m. and 6:00 a.m. of the following morning. For minors 16 years of age or older, the curfew is between 12:00 a.m. midnight and 6:00 a.m. of the following morning.

Section 3. **Responsibility of Parent or Guardian.** No parent, guardian, or person having the care and custody of a minor under the age of 18 years shall knowingly or negligently allow such minor to be in or upon any street, highway, park, alley or other public place between the hours specified in Section 2, except as otherwise provided in this Ordinance. For purposes of this section, a person negligently allows a violation if in the exercise of reasonable diligence the person should have known that a violation would occur.

Section 4. **Violation by Minor.** Any minor who violates the provisions of this ordinance may be taken into custody as provided in ORS 419C.080, 419C.085 and 419.088 and may be subjected to further proceedings as provided by law.

Section 5. **Violation by Parent or Guardian.** Violation of Section 3 of this Ordinance is a Class 2 civil infraction with a forfeiture amount not to exceed $250.00.

Section 6. [Emergency clause.]

Passed by the Council and approved by the Mayor on May 23, 1994.

ORDINANCE NO. 2136

AN ORDINANCE DEFINING CHRONIC NUISANCE PROPERTY, ESTABLISHING CERTAIN REGULATIONS THEREOF, AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Title**. This ordinance shall be known as the "Chronic Nuisance Property Ordinance."

Section 2. **Incorporation of State Statute.** Any reference to state statute incorporated into this ordinance refers to the statute in effect on the effective date of this ordinance.

Section 3. **Definitions.** As used in this ordinance, the following definitions apply.

(A) "Chief of Police" means the Chief of the Woodburn Police Department or his or her designee.

(B) "City Administrator" means the City Administrator of the City of Woodburn or his or her designee.

(C) "Chronic Nuisance Property" means property upon which three or more distinct occurrences of any of the below listed behaviors occur , or whose patrons, employees, residents, owners or occupants engage in three or more of the below listed behaviors within 400 feet of the property following acts or behaviors during any 60 day period:

(1) Criminal homicide as defined in ORS 163.005 or any type of attempted criminal homicide;

(2) Rape in the First Degree as defined in ORS 163.375;

(3) Menacing as defined in ORS 163.190;

(4) Intimidation as defined in ORS 166.155 to ORS 166.165;

(5) Harassment as defined in ORS 166.065;

(6) Disorderly Conduct as defined in ORS 166.025;

(7) Discharge of Weapons as defined in Section 5, Woodburn City Ordinance 1900;

(8) Unnecessary Noise as defined in Section 3, Woodburn City Ordinance 1900;

(9) Drinking in Public Places as defined in Section 1, Woodburn City Ordinance 1900;

(10) Minor in Possession of Alcohol as defined in ORS 471.430;

(11) Assault as defined in ORS 163.160, 163.165, 163.175, or 163.185;

(12) Sexual Abuse as defined in ORS 163.415 to ORS 163.427;

(13) Public Indecency as defined in ORS 163.465;

(14) Public Indecency as defined in Section 2, Woodburn City Ordinance 1900;

(15) Criminal Trespass as defined in ORS 164.245;

(16) Criminal Mischief as defined in ORS 164.345 to ORS 164.365

(17) Unlawful Use of a Weapon as defined in ORS 166.220.

(D) "Owner" means the person or persons having legal or equitable title to the property.

(E) "Property" means any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room. apartment, house, building or structure or any separate part or portion thereof, whether permanent or not.

(F) "Responsible party" includes each of the following:

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

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

Section 4. <u>Chronic Nuisance Property</u>.

(A) The acts or omissions described herein are hereby declared to be public nuisances of the sort that commonly recur in relation to a given property, thereby requiring the remedies set out in this ordinance.

(B) Any property within the City of Woodburn which becomes chronic nuisance property is in violation of this ordinance and subject to its remedies.

(C) Any person who is a responsible party for property which becomes a chronic nuisance property shall be in violation of this ordinance and subject to its remedies.

Section 5. Prefiling Notification Procedure. After two occurrences of any of the acts or behaviors listed in Section 3(C) of this ordinance within a 60-day period, the Chief of Police shall provide notification via certified mail, stating the times and places of the alleged occurrences and the potential liability for violation of this ordinance, to all responsible parties for the property. Responsible parties for a given property shall be presumed from the following:

(A) The owner and the owner's agent, as shown on the tax rolls of Marion County.

(B) The resident of the property, as shown on the records of the City of Woodburn Water Department.

Section 6. Compliance Agreement with Responsible Parties.

(A) After providing notification to all responsible parties as provided in Section 5 above, the Chief of Police has the authority to obtain, on behalf of the city, voluntary agreements to comply with the provisions of this ordinance. Such compliance agreements shall be in written form and signed by all responsible parties. The Chief of Police shall sign said agreements on behalf of the city and provide copies thereof to the City Administrator.

(B) In proposing and signing compliance agreements under this Section, the Chief of Police shall consider the criteria outlined in Section 9 (B) below.

(C) This Section is strictly remedial in nature and shall not be interpreted to limit in any manner the authority of the city to commence an action against any responsible party for a violation of this ordinance, as provided below.

Section 7. Commencement of Actions; Summon and Complaint.

(A) Except as otherwise noted, the procedures to be used in processing an infraction under this ordinance are contained in Ordinance 1998, the Civil Infraction Ordinance.

(B) Subject to the limitations of Ordinance 1998, a default judgment may be entered against a respondent who fails to appear at the scheduled hearing. Upon such judgment, the court may prescribe the remedies described in the ordinance.

Section 8. Remedies.

(A) Upon finding that the respondent has violated this ordinance, the court may:

(1) Require that the chronic nuisance property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180 days; and/or

(2) Assess a civil infraction penalty not to exceed $500.00; and/or

(3) Employ any other remedy deemed by the court to be appropriate to abate the nuisance.

(B) In lieu of closure of the property pursuant to Subsection (A) of this section, the respondent may file a bond acceptable to the court. Such bond shall be in an amount of at least $500 and shall be conditioned upon the non-recurrence of any of the acts or behaviors listed at Section 3(C) of this ordinance for a period of one year after the judgment. Acceptance of the bond described herein is further subject to the court's satisfaction of the respondent's good faith commitment to abatement of the nuisance.

Section 9. <u>Defenses; Mitigation of Civil Penalty.</u>

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

(B) In implementing the remedies described in this ordinance, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

(1) The actions taken by the owner(s) to mitigate or correct the problem at the property;

(2) Whether the problem at the property was repeated or continuous;

(3) The magnitude or gravity of the problem;

(4) The cooperativeness of the owner(s) with the City in remedying the problem;

(5) The cost to the City of investigating and correcting or attempting to correct the condition;

(6) Any other factor deemed by the court to be relevant.

Section 10. **Closure During Pendency of Action; Emergency Closures.** In addition to any other remedy available to the City under this ordinance, in the event that the City Administrator finds that a property constitutes an immediate threat to the public safety and welfare, the City may apply to any court of competent jurisdiction for such interim relief as is deemed to be appropriate.

Section 11. **Enforcement of Closure Order; Costs; Civil Penalty.**

(A) The court may authorize the City to physically secure the property against use or occupancy in the event that the owner(s) fail to do so within the time specified by the court.

(B) The court may assess on the property owner the following costs incurred by the City in effecting a closure of property:

(1) Costs incurred in actually physically securing the property against use;

(2) Police department investigative costs;

(3) Administrative costs and attorneys fees in bringing the action for violation of this ordinance.

(C) The City Administrator may, within 14 days of written decision by the court, submit a signed and detailed statement of costs to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 67, a copy of the statement, including a legal description of the property shall be forwarded to the office of the City Recorder who thereafter shall enter the same in the City's lien docket.

(D) Persons assessed the costs of closure and/or civil penalty pursuant to this ordinance shall be jointly and severally liable for the payment thereof to the City.

Section 12. **Attorney Fees.** In any action brought pursuant to this ordinance, the court may, in its discretion, award reasonable attorneys fees to the prevailing party.

Section 13. **Severability.** If any provision of this ordinance, or its application to any person or circumstance, is held to be invalid for any reason, the remainder of the ordinance, or the application of its provisions to other persons or circumstances, shall not in any way be affected.

Section 14. **Nonexclusive Remedy.** The remedy described in this ordinance shall not be the exclusive remedy of the City for the acts and behaviors described in Section 3(C).

Section 15. [Emergency clause.]

Passed by the Council December 12, 1994 and approved by the Mayor December 14, 1994.

ORDINANCE NO. 2138

AN ORDINANCE GRANTING AUTHORITY AND ESTABLISHING PROCEDURES FOR INVENTORY SEARCHES BY THE WOODBURN POLICE DEPARTMENT AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose**. This ordinance is meant to exclusively apply to the process for conducting an inventory of the personal property in an impounded vehicle and the personal possessions of a person in police custody and shall not be interpreted to affect any other statutory or constitutional right that police officers may employ to search persons or search or seize possessions for other purposes.

Section 2. **Definitions**. For the purpose of this ordinance, the following definitions shall apply:

(A) "Valuables" means:

1. Cash in an aggregate amount of $50.00 or more; or

2. Individual items of personal property with a value of over $500.00.

(B) "Open container" means a container which is unsecured or incompletely secured in such a fashion that the container's contents are exposed to view.

(C) "Closed container" means a container whose contents are not exposed to view.

(D) "Police custody" means either:

1. The imposition of restraint as a result of an 'arrest' as that term is defined in ORS 133.005(1);

2. The imposition of actual or constructive restraint by a police officer pursuant to a court order;

3. The imposition of actual or constructive restraint by a police officer for purposes of taking the restrained person to an approved facility for the involuntary confinement of persons pursuant to Oregon law.

(E) "Police officer" means any peace officer, as defined by ORS 133.005 (3) who is employed by the Woodburn Police Department.

Section 3. Inventories of Impounded Vehicles.

(A) The contents of all vehicles impounded by a police officer shall be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:

1. If there is reasonable suspicion to believe that the safety of either the police officer or another person is at risk, a required inventory shall be done as soon as safely practical; and

2. If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the inventory shall be done after such investigation is completed.

(B) The purposes for the inventory of an impounded vehicle are:

1. To promptly identify property to establish accountability and avoid spurious claims to property;

2. To assist in the prevention of theft of property;

3. To locate toxic, flammable or explosive substances; and

4. To reduce the danger to persons and property.

(C) Inventories of impounded vehicles shall be conducted according to the following procedure:

1. An inventory of personal property and the contents of open containers shall be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats;

2. In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers shall also be conducted in the following locations:

a. Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks and unlocked car-top containers; and

b. Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.

3. An inventory shall include opening of closed containers located in the vehicle that are designed to hold valuables, including, but not limited to, backpacks, fanny packs, briefcases, laptop bags, and purses.

4. Upon completion of the inventory, the police officer shall complete a report.

5. Any valuables located during the inventory process shall be listed on a property receipt. A copy of the property receipt shall either be left in the vehicle or tendered to the person in control of the vehicle if such person is present. [Section 3 as amended by Ordinance 2408, passed August 14, 2006.]

Section 4. Inventories of Persons in Police Custody.

(A) A police officer shall inventory the personal property in the possession of a person taken into police custody and said inventory will occur:

1. At the time of booking; or

2. At the time custody of the person is transferred to another law enforcement agency, correctional facility, or "treatment facility" as that phrase is used in ORS 426.460 or such other lawfully approved facility for the involuntary confinement of persons pursuant to Oregon Revised Statute.

(B) The purposes for the inventory of a person in police custody are:

1. To promptly identify property to establish accountability and avoid spurious claims to property;

2. To fulfill the requirements of ORS 133.455 to the extent that such statute may apply to certain property held by the police officer for safekeeping;

3. To assist in the prevention of theft of property;

4. To locate toxic, flammable or explosive substances;

5. To locate weapons and instruments that may facilitate an escape from custody or endanger law enforcement personnel; and

6. To reduce the danger to persons and property.

(C) Inventories of the personal property in the possession of such persons shall be conducted according to the following procedures:

1. An inventory shall occur at the time of booking. However, if reasonable suspicion exists to believe that the safety of either the police officer or the person in custody or both are at risk, an inventory will be done as soon as safely practical prior to the transfer of custody to another law enforcement agency or facility.

2. To complete the inventory of the personal property in the possession of such person, the police officer shall remove all items of personal property from the clothing worn by such person. In addition, the officer will also remove all items of personal property from all open containers in the possession of such person.

3. A closed container in the possession of such person will have its contents inventoried only when:

a. the closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle or secure police holding room;

b. such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or

c. the closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.

(D) Valuables found during the inventory process shall be noted by the police officer in a report.

(E) All items of personal property not left in the immediate possession of the person in custody nor left with the facility or agency accepting custody of the person shall be handled by preparing a property receipt listing the property to be retained in the possession of the police department. A copy of that receipt will be tendered to the person in custody when such person is released to the facility or agency accepting custody of such person;

(F) All items of personal property not left in the immediate possession of the person in custody nor dealt with as provided in section 4(E) above, will be released to the facility or agency accepting custody of the person so that they may:

1. Hold the property for safekeeping on behalf of the person in custody, and

2. Prepare and deliver a receipt, if required by ORS 133.455, for any valuable held on behalf of the person in custody.

Section 5. [Emergency clause.]

Passed by the Council February 13, 1995 and approved by the Mayor February 14, 1995.

ORDINANCE NO. 2312

AN ORDINANCE REGULATING NOISE WITHIN THE CITY OF WOODBURN; PROVIDING FOR ENFORCEMENT OF NOISE REGULATIONS; AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. This ordinance is enacted to protect, preserve, and promote the health, safety, and welfare of the residents of the City of Woodburn through the reduction, control, and prevention of loud raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

Section 2. Findings.

A. Loud and raucous noise degrades the environment of the City of Woodburn because it is harmful to the health, welfare, and safety of its inhabitants and visitors; it interferes with the comfortable enjoyment of life and property; it interferes with the well-being, tranquility, and privacy of the home; and it can cause and aggravate health problems.

B. The effective control and elimination of loud and raucous noise are essential to the health and welfare of the City of Woodburn's inhabitants and visitors to conduct the normal pursuits of life, including recreation, work, and communications.

C. The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and in a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of the inhabitants and visitors to the City of Woodburn.

D. Some flexibility in noise restrictions is essential in order to allow for the construction and the maintenance of structures, infrastructure, and other elements necessary for the physical and commercial well-being of the City of Woodburn.

Section 3. Scope. This Ordinance shall be known as the Woodburn Noise Ordinance and will apply to control all sound originating within the jurisdictional limits of the City of Woodburn.

Section 4. Definitions. For the purposes of this ordinance, the following definitions apply:

A. A-Scale (dBA). The sound level in decibels measured using the A-weighted network as specified in the American National Standard Specification for Sound Level Meters.

B. Decibel (dB). The unit for measuring the volume of a sound.

C. Noise Sensitive Unit Any authorized land use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single-family dwelling, duplex, triplex, multi-family dwelling, or mobile home) or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

D. Sound Level Meter. A sound measuring device, either Type 1 or Type 2, as defined by American National Standard Specification for Sound Level Meters.

E. Sound Producing Device. A sound producing device includes, but is not limited to, the following:

(1) Loudspeakers;

(2) Radios, tape players, compact disc players, phonographs, boom boxes, television sets, or stereo systems, including those installed in a vehicle;

(3) Musical instruments;

(4) Sirens, bells or whistles;

(5) Engines or motors;

(6) Air, electrical, or gas-driven tools, including, but not limited to, drills, chainsaws, lawn mowers, saws, hammers or similar tools;

(7) Motor vehicles, including automobiles, motorcycles, motorbikes, trucks, buses, snowmobiles, boats or any similar piece of equipment equipped with a propelling device;

(8) Persons or animals causing sound to emanate.

Section 5. <u>Sound Measurements</u>.

A. When sound measurements are made for the enforcement of this Ordinance, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter and shall contain at least an A-weighted scale, and both fast and slow meter response capability.

B. If sound measurements are made, the person making those measurements shall have completed training in the use of the sound level meter, and shall use measurement procedures consistent with that training

C. Measurements may be made at or within the boundary of the property on which a noise sensitive unit is located which is not the source of the sound.

Section 6. Noises Prohibited.

A. It shall be unlawful for any person to produce or permit to be produced, with any sound producing device which when measured at or within the boundary of the property on which a noise sensitive unit is located which is not the source of the sound, which sound exceeds the following levels:

(1) 55 dBA at any time between 9:00 p.m. and 7:00 a.m. of the following day where the property receiving the noise has a residential zoning designation.

(2) 65 dBA at any time between 7:00 a.m. and 9:00 p.m. of the same day where the property receiving the noise has a residential zoning designation.

(3) 60 dBA at any time between 9:00 p.m. and 7:00 a.m. of the following day where the property receiving the noise has a zoning designation which is not residential.

(4) 75 dBA at any time between 7:00 a.m. and 9:00 p.m. of the same day where the property receiving the noise has zoning designation which is not residential.

[Section 6A amended by Ordinance No. 2380, passed February 28, 2005.]

B. In addition to Section 6A, any person producing or permitting to be produced the following noise disturbances, shall be found in violation of this Ordinance, regardless of the decibel level of the disturbance:

(1) Repair and testing of a motor vehicle or other engine which is plainly audible within a noise sensitive unit between the hours of 9:00 p.m. and 7:00 a.m. of the following day.

(2) The operation of any gong, bell or siren upon any vehicle, other than police, fire or other emergency vehicle.

(3) The sounding of any motor vehicle audible anti-theft alarm system for a period of more than 20 minutes.

(4) The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise created thereby is effectively muffled.

(5) The detonation of a blasting or explosive device, except as allowed under a permit issued by the appropriate governmental authority.

(6) The keeping of an animal which by loud and frequent or continued noise disturbs the comfort and repose of a person in the vicinity.

(7) The erection, including excavation, demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m. except in the case of urgent necessity in the interest of the public welfare and safety and then only with a permit granted by the City Administrator for a period not to exceed ten (10) days.

Section 7. **Exceptions**. The following constitute exceptions to this Ordinance and shall not be construed as violations:

A. Sounds created by organized athletic or other group activities, when such activities are conducted on public property generally used for such purposes, such as stadiums, schools, and athletic fields.

B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus.

C. Sounds caused by bona fide use of emergency warning devices and properly functioning alarm systems.

D. Sounds regulated by federal law, including but not limited to, sounds caused by railroads or aircraft.

E. Sounds caused by demolition activities when performed under a permit issued by appropriate governmental authorities.

F. Sounds caused by construction activity during the hours of 7:00 a.m. to 9:00 p.m. of the same day.

G. Sounds caused by regular vehicular traffic upon premises open to the public.

H. Sounds caused by air, electrical or gas-driven domestic tools, including but not limited to, lawn mowers, lawn edgers, saws, drills, blowers, and or other similar lawn or construction tools, during the hours of 7:00 a.m. to 9:00 p.m. of the same day.

I. Bells, chimes and carillons while being used for religious purposes or in conjunction with religious services, or for national celebrations or public holidays.

J. Parades for which a City permit has been issued.

K. Sounds resulting from an event conducted in a City park where a park use permit has been issued and the conditions of that permit and this Ordinance have been complied with.

L. Any noise resulting from activities of a temporary duration which is otherwise permitted by law.

Section 8. Sound Amplification Permits

A. No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier or any other machine or device which produces, reproduces, or amplifies sound outside of an enclosed building without first having obtained a sound amplification permit.

B. Any person desiring to obtain a sound amplification permit shall submit a written application to the Police Chief no later than 30 days prior to proposed date for commencement of the amplified sound. The application shall include the following:

(1) A description of the activity proposed to be conducted for which the sound amplification permit is requested;

(2) A description of the amplification equipment or devices to be used;

(3) A statement of the measures that the applicant will take to insure that the sound amplification will not unreasonably disturb other people in the vicinity;

(4) The exact time periods and location where the sound amplification will take place;

(5) The name of the person who shall be responsible for monitoring and insuring compliance with the terms of any permit that is granted;

(6) Any City fee for processing the application; and

(7) Any other information that the Police Chief determines is reasonably needed to assure compliance with the provisions of this Ordinance.

C. The Police Chief may grant the sound amplification permit if he or she determines that the sound amplification will not occur within a residential zone and that it will be conducted in such a manner as not to unreasonably disturb the neighbors of other persons in the vicinity of the site and that the measures, if implemented, will be adequate. In granting a permit, the Police Chief may impose such conditions as may be appropriate or necessary to protect the public peace, safety, and welfare.

D. Any permit granted pursuant to this Ordinance shall be revocable at any time by the Police Chief for good cause.

E. Any person aggrieved by any decision rendered by the Police Chief pursuant to this Ordinance shall have the right to appeal the decision to the City Council. Any appeal shall be in writing and shall be submitted no later than ten (10) calendar days following the date of the decision.

Section 9. **Sound Amplification in City Parks.** Notwithstanding any other provisions of this Ordinance, the Director of Recreation and Parks is authorized to allow amplified sound in a City park by the issuance of a park use permit where a sound level of 80 dBA is not exceeded.

Section 10. **Authority for Enforcement**. This Ordinance shall be enforced by the Woodburn Police Department.

Section 11. **Civil Infraction Assessment**. Each violation of any provision of this Ordinance constitutes a class 1 civil infraction and shall be dealt with according to the procedures established by City ordinance.

Section 12. **Institution of Legal Proceedings**. The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Ordinance as additional remedy.

Section 13. **Ordinance Additional to Other Law**. The provisions of this Ordinance shall be cumulative and non-exclusive and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject.

Section 14. **Severability Clause**. If a portion of this Ordinance is for any reason held to be invalid, such decision shall not affect validity of the remaining portions of this ordinance.

Section 15. **Repeal**. Section 3 (Unnecessary Noise) of Ordinance 1900 is hereby repealed.

Section 16. **Saving Clause**. The repeal of any ordinance by this Ordinance shall not preclude any action against any person who violated the ordinance prior to the effective date of this Ordinance.

Section 17. **Emergency Clause**. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council April 8, 2002 and approved by the Mayor April 9, 2002.

ORDINANCE NO. 2338

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR NUISANCE ABATEMENT; ESTABLISHING A PENALTY; REPEALING ORDINANCE 1616 AND ORDINANCE 1822; AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. Enforcement Officer. A police officer, code enforcement officer or other city official authorized by the City Administrator to enforce this Ordinance.

B. Junk. Broken, discarded, or accumulated objects, including but not limited to: appliances, building supplies, furniture, vehicles, or part of vehicles.

C. Junked Vehicle. A vehicle which is damaged or defective in any of the following respects which either make the vehicle immediately inoperable or would prohibit the vehicle from being operated in a reasonably safe manner:

1. Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels;

2. Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including, but not limited to, engine, transmission, transaxle, drive shaft, differential, or axle;

3. Extensive exterior body damage or missing or partially or totally disassembled essential body parts, including, but not limited to, fenders, doors, engine hood, bumper or bumpers, windshield, or windows;

4. Missing or partially or totally disassembled essential interior parts, including, but not limited to, driver's seat, steering wheel, instrument panel, clutch, brake, gear shift lever;

5. Missing or partially or totally disassembled parts essential to the starting or running of the vehicle under its own power, including, but not limited to, starter, generator or alternator, battery, distributor, gas tank, carburetor or fuel injection system, spark plugs, or radiator;

6. The interior is being used as a container for metal, glass, paper, rags or other cloth, wood, auto parts, machinery, waste or discarded materials in such quantity, quality and arrangement that a driver cannot be properly seated in the vehicle;

7. The vehicle is lying on the ground (upside down, on its side, or at other extreme angle), sitting on block or suspended in the air by any other method;

8. The vehicle is located in an environment which includes, but is not limited to, vegetation that has grown up around, in or through the vehicle, the collection of pools of water in the vehicle, and the accumulation of other garbage or debris around the vehicle.

D. Owner. The owner of record, based on the Marion County's most recent taxation and assessment roll, of the property on which the alleged public nuisance exists at the time of the violation.

E. Person. Any natural person, firm, partnership, association or corporation

F. Person in Charge of Property. An owner, agent, occupant, lessee, tenant, manager, contract purchaser, bailee or other person having possession or control of property or the supervision of any construction project.

G. Responsible Party. The person responsible for abating, curing or remedying a nuisance shall include:

1. The owner,

2. A person in charge of property,

3. The person who is alleged to have committed the acts or omissions, created or allowed the condition to exist, or placed the object or allowed the object to exist on the property that constitutes a nuisance as defined in this Ordinance or another Ordinance of this city.

H. Vehicle. Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.

Section 2. Declaration of Public Nuisances.

The acts, omissions, conditions or objects specifically enumerated in this Ordinance are hereby declared to be public nuisances and may be abated as provided in this Ordinance. In addition to the nuisances specifically enumerated in this Ordinance, every other thing, substance or act determined by the City Council to be offensive, harmful or detrimental to the public health, safety or welfare of the city is declared to be a public nuisance.

Section 3. Nuisances Affecting the Public Health. No person or responsible party shall cause or permit a nuisance affecting the public health. The following are declared to be nuisances affecting the public health:

A. Cesspools. Cesspools or septic tanks that are in an unsanitary condition or which cause an offensive odor.

B. Dead Animals. Any carcass or carcass part of any fowl or animal.

C. Garbage. As used in this subsection the term "garbage" means an accumulation of decomposed animal or vegetable matter, debris, rubbish, trash, filth, or refuse except:

1. Yard cuttings, other than grass clippings, may be accumulated on property owned or leased by the person for burning at the first available burn season. The accumulations shall meet the size and location requirements of the fire code.

2. Composting, but only if it is maintained in a way that does not attract vermin, and does not produce an offensive odor.

D. Odor. Premises that are in such a state or condition as to cause an offensive odor detectable at the property line.

E. Privies and Outdoor Toilet Facilities. Any privy or outdoor toilet facility, except a properly functioning portable toilet as that term is defined by the Oregon Department of Environmental Quality.

F. Rodent Attracting Condition. Any condition outside a building or structure which attracts or is likely to attract, feed or harbor rodents.

G. Stagnant Water. Stagnant water that affords a breeding place for mosquitoes and insect pests.

H. Surface Drainage. Drainage of liquid wastes from private premises.

I. Water Pollution. Any sewage, industrial waste or other substances placed in or near a body of water, well, spring, stream or drainage ditch in a way that may cause harmful material to pollute the water.

Section 4. Nuisances Affecting the Public Safety. No person or responsible party shall cause or permit a nuisance affecting the public safety. The following are declared to be nuisances affecting the public safety:

A. Razor and Electric Fences. A fence constructed of materials that could cause bodily harm, including, but not limited to, those conveying electric current, razor wire, spikes and broken glass.

B. Dangerous Trees. A standing dead or decaying tree that is in danger of falling or otherwise constitutes a hazard to the public or to any persons or property within the public right- of-way.

C. Hazardous Vegetation. Vegetation that reasonably constitutes a health hazard, fire hazard or traffic hazard.

D. Holes. A well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more, unless it is covered or fenced with suitable protective construction.

E. Obstructions. Earth, rock and other debris and other objects that may obstruct or render the street or sidewalk unsafe for its intended use.

F. Snow and Ice. Snow or ice remaining on a sidewalk abutting the property of the owner or person in charge of property for longer than the first two hours of daylight after cessation of the snowfall or formation of the ice, unless covered with sand or other suitable material to assure safe travel.

Section 5. Noxious Vegetation.

A. The term "noxious vegetation" means:

1. Weeds more than ten inches high;

2. Grass more than ten inches high;

3. Poison oak, poison ivy, or similar vegetation;

4. Berry vines and bushes that extend into a public right-of-way.

B. Between May 1 and September 30 of any year, no owner or responsible party shall allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property. The owner or responsible party shall cut down or destroy grass, shrubbery, brush, bushes, weeds or other noxious vegetation as often as needed to prevent them from becoming unsightly or, in the case of weeds or other noxious vegetation, from maturing or from going to seed.

C. The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard or a fire or traffic hazard.

Section 5A. Light Trespass

A. All outdoor lights that trespass onto lots with a dwelling shall be turned off between the hours of 9:00 p.m. and 7:00 a.m. For purposes of this section, "trespass" means light that falls beyond the property line of the property it is intended to illuminate. Trespass shall be confirmed if a light fixture is visible when evaluated from a point six feet above ground elevation at an adjacent property line. "Light fixture" means the socket or similar component that holds the bulb or lamp in place, the bulb itself, and any covering around the bulb or lamp that allows light to pass through. This restriction shall not apply to:

1. Lights mounted on a dwelling or accessory building at its main entries, rear entries, side doors, walkways or paths;

2. Light emanating from a property that has a commercial zoning designation;

3. Lighting used for safety or security purposes that is mounted on a dwelling or accessory building;

4. Public street lighting; and

5. Temporary holiday lighting;

B. Light trespass is a Class 3 civil infraction.

[Section 5A added by Ordinance 2522, passed September 22, 2014.]

Section 6. **Attractive Nuisances.** No person or responsible party shall permit on property:

A. Unguarded machinery, equipment or other devices which are attractive, dangerous, and accessible to children.

B. Lumber, logs, building material or piling placed or stored in a manner so as to be attractive, dangerous, and accessible to children.

C. An open pit, quarry, cistern or other excavation without safeguards or barriers to prevent such places from being used by children

D. A container with a compartment of more then one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot easily be opened from the inside which is accessible to children.

This section shall not apply to authorized construction projects conducted pursuant to applicable laws with reasonable safeguards to prevent injury or death to playing children.

Section 7. **Junked Vehicle Nuisances.**

A. Junked vehicles are hereby found to create a condition tending to reduce the value of property, to promote blight and deterioration, and invite plundering and vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minor, to create a harborage for rodents and insects, and to be injurious to the health, safety, and general welfare.

B. No person or responsible party shall park or in any other manner place and leave unattended on public property, a junked vehicle for more than forty-eight (48) continuous hours, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle

C. No person or responsible party shall park, store, keep or maintain on private property a junked vehicle for more than thirty (30) days.

D. It shall be permissible to keep or permit the keeping of a junked vehicle within the city if the junked vehicle is completely enclosed within a building or is kept in connection with a licensed and legally zoned junkyard or automobile wrecking yard.

Section 8. Open Storage of Junk. No person or responsible party shall deposit, store, maintain or keep any junk on real property, except in a fully enclosed storage facility, building or garbage receptacle. This section shall not apply to material kept by a licensed and legally zoned junkyard or automobile wrecking yard.

Section 9. Scattering Rubbish. No person or responsible party shall deposit upon public or private property any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance of the property, create a stench or fire hazard, detract from the cleanliness or safety of the property or would be likely to cause injury to a person or animal.

Section 10. Garbage and Debris – Disposition. A person in charge of property shall dispose of perishable garbage before it becomes offensive promptly, but in any event at least bi-weekly; and not permit garbage to accumulate on or about the premises. All garbage shall be disposed of in a manner which does not create a nuisance and which is permitted by this chapter. Garbage may be disposed of by hauling or causing it to be hauled to a garbage dump.

Section 11. Garbage Cans and Containers.

A. A person in charge of property where garbage accumulates shall keep or cause to be kept on the premises one or more portable containers of a standard type suitable for deposit of garbage and shall deposit or cause to be deposited in the containers all garbage that accumulates on the premises.

B. Garbage containers shall be sturdy, watertight, not easily corrodible, rodent-and-insect-proof, and have handles at the sides and tightly fitting lids. When not being emptied or filled, the container shall be kept tightly closed and out of the city right-of-way. They shall be conveniently accessible to garbage haulers. Within 24 hours of garbage collection the person in charge of property shall remove all garbage containers from the collection point and place them either next to the side of the main dwelling unit or in a location out of the view of public or adjacent property. Residents whose point of collection is from an alley need not remove the container from the point of collection.

Section 12. Abatement Notice. Whenever a nuisance is found to exist within the corporate limits of the city and the enforcement officer elects to proceed by abatement, the enforcement officer shall give written notice, by a type of mail that requires a signed receipt, to the occupant of the property upon which the nuisance exists or upon the person causing or maintaining the nuisance. If the occupant is not the owner of the property, the same notice shall be sent, by a type of mail that requires a signed receipt, to the owner.

Section 13. **Abatement.** Upon receipt of the notice that a nuisance exists, the responsible party shall have seven days to abate the nuisance.

Section 14. **Notice Requirements.** The notice to abate a nuisance shall contain the following:

A. An order to abate the nuisance within seven days;

B. The location of the nuisance, if the same is stationary;

C. A description of what constitutes the nuisance;

D. A statement that if the nuisance is not abated within the prescribed time, the city will abate such nuisance and assess the cost thereof against the property.

E. A statement that a person who is dissatisfied with the abatement notice has the right to judicial review under this Ordinance.

Section 15. **Request for Judicial Review.** An responsible party may object to the action intended by the city by filing a written request for judicial review in the Woodburn Municipal Court within five days of the date that the notice to abate was mailed.

Section 16. **Requirements for Request.** The request for judicial review need not be in any particular form, but should substantially comply with the following requirements:

A. Be in writing;

B. Identify the place and nature of the alleged nuisance;

C. Specify the name and address of the person seeking judicial review;

D. Identify the enforcement officer alleging that a nuisance exists.

A copy of the notice shall be served on the enforcement officer

Section 17. **Scheduling of Judicial Review.**

A. The judicial review hearing shall be held within ten (10) days after the request for judicial review is made. The day may be postponed by:

1. Agreement of the parties; or

2. Order of the court for good cause.

B. The court shall promptly notify:

1. The person requesting the review; and

2. The enforcement officer.

Section 18. **Judicial Review Hearing**. At the judicial review hearing the city and any interested parties shall have the right to present evidence and witnesses and to be represented by legal counsel at their own expense. After due consideration of pertinent information and testimony, the court shall make its finding. The findings shall be based on substantial evidence relative to the criteria outlined in this Ordinance and shall be final.

Section 19. **Notification of Violation.** The responsible party shall be notified by a type of mail that requires a signed receipt postmarked no later than five days after the findings are entered by the court by personal delivery by a representative of the city. Upon notification of violation, the responsible party will have seven days to abate the nuisance.

Section 20. **Abatement by City**. Upon the failure of the responsible party to abate the nuisance pursuant to the provisions of this Ordinance, the enforcement officer shall proceed to abate such nuisance.

Section 21. **Abatement by City: Expenses.** The enforcement officer shall keep an accurate record of the expenses incurred by the city in physically abating the nuisance which shall include an additional administrative fee in the amount provided by the current Master Fee Schedule of the city.

Section 22. **Assessment of Costs**.

A. The enforcement officer, by certified or registered mail, postage prepaid, shall forward to the responsible party a notice stating:

1. The total cost of abatement, including the administrative overhead;

2. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

B. Upon the expiration of 10 days after the date of the notice, the court, in the regular course of business, shall near and determine the objections to the costs assessed.

C. If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as determined by the court, shall be made 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.

D. The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the legal rate. The interest shall commence to run from the date of the entry of the lien in the lien docket.

E. An error in the name of the person responsible 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.

Section 23. Summary Abatement. In addition to the abatement procedure provided by this Ordinance, the city may, in accordance with the law, proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers the environment, human life, health or property.

Section 24. Notice. Any notice required in this Ordinance shall be sufficient if the person to be notified is substantially apprised of the substance of the notice, notwithstanding any minor deficiencies or irregularities of form. Actual receipt of the notice is not required, as long as a good faith effort is made to deliver it.

Section 25. Enforcement.

A. Inspection and Right of Entry. When necessary to investigate a suspected violation of this Ordinance, the enforcement officer may enter on any site or into any structure open to the public for the purpose of investigation, provided entry is done in accordance with law. Absent a search warrant, no site or structure that is closed to the public shall be entered without the consent of the owner or occupant.

B. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance.

C. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the city to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate any violations of this Ordinance.

Section 26. Separate Offenses. Each day during which a violation of this Ordinance continues shall constitute a separate offense for which a separate penalty may be imposed..

Section 27. Effect of Abatement. The abatement of a nuisance is not a penalty for violating this Ordinance, but is an additional remedy. The imposition of a penalty assessment does not relieve a person of the duty to abate the nuisance.

Section 28. Severability. The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 29. Repeal. Ordinance 1616 and Ordinance 1822 are hereby repealed.

Section 30. **Saving Clause.** Notwithstanding the repeal of Ordinance 1616 and Ordinance 1822, Ordinance 1616 and Ordinance 1822 shall remain in force for the purpose of authorizing the prosecution of a person who violated Ordinance 1616 or Ordinance 1822 prior to the effective date of this Ordinance.

Section 31. [Emergency clause.]

Passed by the Council June 9, 2003 and approved by the Mayor June 11, 2003.

ORDINANCE NO. 2410

AN ORDINANCE ESTABLISHING RULES OF CONDUCT FOR THE WOODBURN PUBLIC LIBRARY; PROVIDING FOR ENFORCEMENT PROCEDURES; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. In addition to other measures provided by law, any peace officer, as defined by ORS 133.005(3) or any City of Woodburn Code Enforcement Officer may exclude any person from the premises of the Woodburn Public Library as provided in this Ordinance.

Section 2. No person shall enter or remain on the premises of the Woodburn Public Library at any time after a Notice of Exclusion issued under this Ordinance is in effect.

Section 3. A Notice of Exclusion issued under this Ordinance shall be for thirty (30) days. If the person to be excluded has been excluded from the premises of the Woodburn Public Library at any time, within two years before the date of the present exclusion, the exclusion shall be for ninety (90) days. If the person to be excluded has been excluded from the Woodburn Public Library on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for one-hundred eighty (180) days.

Section 4. When there is reasonable cause to believe that a person has committed any of the following acts on the premises of the Woodburn Public Library, a Notice of Exclusion shall be issued and the person shall be directed to leave the library without first being give a warning:

(A) Any activity that would constitute a violation of any federal or state criminal law.

(B) Engaging in sexual conduct, as defined under ORS 167.060.

(C) Possessing or consuming any alcoholic beverages.

(D) Possessing or consuming any controlled substances in violation of ORS Chapter 475.

Section 5. When there is reasonable cause to believe that a person has committed any of the following acts on the premises of the Woodburn Public Library, a Notice of Exclusion shall be issued only after the person has first been given a warning and a reasonable opportunity to desist from the violation:

(A) Engaging in conduct that unreasonably disrupts or interferes with the normal operation of the library, or disturbs library staff or patrons. This conduct includes but is not limited to abusive or threatening language or gestures, conduct that

creates unreasonable noise, or conduct that consists of loud or boisterous physical behavior.

(B) Using library materials, equipment, furniture, fixtures or buildings in a manner inconsistent with the customary use thereof; or in a destructive, abusive or potentially damaging manner, or in a manner likely to cause personal injury to the actor or others.

(C) Soliciting, petitioning, distributing written materials or canvassing for political, charitable or religious purposes.

(D) Interfering with the free passage of library staff or patrons, including but limited to, placing objects such as bicycles, skateboards, backpacks or other items in a manner that interferes with free passage.

(E) Operating roller skates, skateboards or other similar devices.

(F) Smoking or other use of tobacco.

(G) Bringing an animal into the library, except a Seeing Eye or Hearing Ear dog, or other animal trained to assist a person with a disability.

(H) Improperly using library restrooms, including but not limited to, bathing, shaving, washing hair and changing clothes.

(I) Using personal electronic equipment at a volume that disturbs others, including but not limited to, pagers, stereos, televisions and cellular phones.

(J) Failing to leave the library at closing time.

(K) Eating or drinking except as expressly allowed by the Library Director in the course of a library-approved event.

Section 6. Where there is reasonable cause to believe that a person has committed any of the following acts, the person may be directed to leave the premises of the Woodburn Public Library until the problem is corrected:

(A) Not wearing shoes or other footwear.

(B) Not wearing a shirt or other covering of the upper body.

Section 7. A Notice of Exclusion under this Ordinance shall specify the date the exclusion is to commence, the term of the exclusion, the provision of law that the person violated, and a brief description of the offending conduct. It shall be signed by the issuing party. The Notice of Exclusion shall provide information concerning the right to appeal the notice and to apply for a temporary waiver from the effects of the notice

warning of consequences for failure to comply shall be prominently displayed on the notice.

Section 8. Notices of Exclusion shall take effect immediately except that if a timely appeal is filed under this Ordinance, the effectiveness of the exclusion shall be stayed pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of the exclusion shall become effective immediately upon issuance of the Woodburn Municipal Court decision, unless the Court sets a later effective date.

Section 9. A person receiving a Notice of Exclusion may appeal to the Woodburn Municipal Court to have the notice rescinded or the exclusion period shortened. In order to be timely, an appeal must be filed within five (5) days of receipt of the Notice of Exclusion.

(A) The appeal need not be in any particular form, but should substantially comply with the following requirements:

(i) Be in writing
(ii) Identify the date, time, and place of the exclusion
(iii) Identify the name and address of the appealing party
(iv) Identify the official who issued the exclusion
(v) Contain a concise statement as to why the Notice of Exclusion was issued in error

(B) A copy of the appeal shall be served on the City Attorney.

(C) An appeal hearing shall be conducted by the Woodburn Municipal Court and a decision on the appeal shall be made by the Court within ten (10) days after the appeal is filed.

(D) At the appeal hearing the City and any interested parties shall have the right to present evidence and witnesses and be heard. After due consideration of pertinent information and testimony the Court shall issue a written decision. The decision of the Court shall be final.

***Section 10**. At any time within the exclusion period, a person receiving a Notice of Exclusion may apply in writing to the City Administrator for a temporary waiver from the effects of the notice for good cause shown. In exercising discretion under this section, the City Administrator shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be on the premises of the Woodburn Public Library during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the City Administrator determines to be relevant to the determination of whether or not to grant a waiver. The decision of the City Administrator to grant or deny, in whole or in part, a waiver under this section is committed to the discretion of the City Administrator, and is not subject to appeal or review.*

Section 11. [Emergency clause.]

Passed by the Council September 25, 2006 and approved by the Mayor September 27, 2006.

ORDINANCE NO. 2411

AN ORDINANCE PROHIBITING GRAFFITI AND THE POSSESSION OF GRAFFITI IMPLEMENTS; CREATING THE OFFENSE OF FAILURE TO SUPERVISE A MINOR COMMITTING GRAFFITI VIOLATIONS; PROVIDING FOR THE ABATEMENT OF GRAFFITI NUISANCE PROPERTY; AND REPEALING ORDINANCE 2173

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions:

A. "Graffiti" means any inscriptions, words, figures or designs that are marked, etched, scratched, drawn, painted, pasted or otherwise affixed to the surface of property, as defined by ORS 164.381(1).

B. "Graffiti implement" means any paint, ink, chalk, dye or other substance or any instrument or article designed or adapted for spraying, marking, etching, scratching or carving surfaces as defined by ORS 164.381(2).

C. "Graffiti nuisance property" means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, any other public or private property or from any premises open to the public, and if the graffiti has not been abated within the time required by this ordinance.

D. "Owner" means the legal owner of property or a person in charge of property.

E. "Person in charge of property" means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or supervision of a construction project.

F. "Property" means any real or personal property and that which is affixed, incident or appurtenant to real property, including but not limited to any premises, house, building, fence, structure or any separate part thereof, whether permanent or not.

Section 2. Prohibited Graffiti. It shall be unlawful for any person to apply graffiti.

Section 3. Unlawful Possession of Graffiti Implement. It shall be unlawful for any person to possess a graffiti implement with the intent to apply graffiti.

Section 4. Failure to Supervise a Minor Committing Graffiti Violations. It shall be unlawful for a parent, guardian, or other person having the legal custody of a minor person under the age of 18 years to allow or permit the minor to be in violation of Section 2 or Section 3 of this ordinance.

Section 5. Graffiti Nuisance Property.

A. It is hereby found and declared that graffiti creates a visual blight and property damage. When graffiti is allowed to remain on property and not promptly removed, it invites additional graffiti, gang activity, criminal activity, and constitutes a nuisance.

B. Any property within the city which becomes graffiti nuisance property is in violation of this ordinance.

C. Any owner of property who permits said property to be a graffiti nuisance property is in violation of this ordinance.

Section 6. Notice Procedure.

A. When the Chief of Police believes in good faith that property within the city is a potential graffiti nuisance property, the Chief of Police shall, notify the owner in writing that the property is a potential graffiti nuisance property. The notice shall contain the following information:

(1) The street address or description sufficient for identification of the property.

(2) That the Chief of Police has found the property to be a potential graffiti nuisance property with a concise description of the conditions leading to this finding.

(3) A direction to abate the graffiti, or show good cause to the Chief of Police why the owner cannot abate the graffiti, within ten city business days from service of the notice.

(4) That if the graffiti is not abated and good cause for failure to abate is not shown, the City Council may order abatement, with appropriate conditions. The City Council may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint to be filed in a court of competent jurisdiction.

(5) That permitting graffiti nuisance property is a Class 2 civil infraction punishable by a civil forfeiture not to exceed $750, pursuant to the Civil Infraction Ordinance.

(6) That the above remedies are in addition to those otherwise provided by law.

B. Service of the notice is completed by personal service or upon mailing the notice by first class mail, postage prepaid, addressed to the owner at the owner's last known address.

C. A copy of the notice shall be served on occupants of the property, if different from the owner.

D. The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this ordinance.

Section 7. Abatement Procedures.

A. Within ten business days of the personal service or mailing of the notice the owner shall abate the graffiti or show good cause why the owner cannot abate the graffiti within that time period.

B. Upon good cause shown, the Chief of Police may grant an extension not to exceed ten additional city business days.

C. If the owner does not comply with the provisions of this ordinance, the Chief of Police may refer the matter to the City Council for hearing as a part of its regular agenda at the next succeeding meeting. The City Recorder shall give notice of the hearing to the owner and occupants, if the occupants are different from the owner.

D. At the time set for a hearing, the owner and occupants may appear and be heard by the City Council.

E. The City Council shall determine whether the property is graffiti nuisance property and whether the owner has complied with this ordinance.

F. The city has the burden of proving by a preponderance of the evidence that the property is graffiti nuisance property.

G. The owner has the burden of proving by a preponderance of the evidence that there is good cause for failure to abate the nuisance within ten city business days of the personal service or mailing of the notice.

Section 8. REMEDIES OF THE CITY.

A. In the event that the City Council determines that the property is graffiti nuisance property, the City Council may order that the nuisance be abated. This order may include conditions under which abatement is to occur.

B. The City Council may also employ any other legal remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing the filing of a civil complaint in a court of competent jurisdiction.

C. The remedies provided in this section are in addition to those otherwise provided by law.

Section 9. Civil Penalties. Violations of this ordinance shall be processed under the Civil Infraction Ordinance with penalties consistent with Oregon state law.

A. Consistent with ORS 164.383 and ORS 153.018, a violation of Section 2 of this ordinance ("Prohibited Graffiti") constitutes a civil infraction punishable by a civil forfeiture not to exceed $360.

B. Consistent with ORS 164.386 and ORS 153.018, a violation of Section 3 of this ordinance ("Unlawful Possession of Graffiti Implement") constitutes a civil infraction punishable by a civil forfeiture not to exceed $90.

C. A violation of Section 4 of this ordinance ("Failure to Supervise a Minor Committing Graffiti Violations") constitutes a Class 2 civil infraction punishable by a civil forfeiture not to exceed $500.

D. A violation of Section 5 of this ordinance ("Graffiti Nuisance Property") constitutes a Class 2 civil infraction punishable by a civil forfeiture not to exceed $500.

Section 10. Alternate Disposition by Court. At the discretion of the Woodburn Municipal Court, all persons that are fond to have violated Sections 2, 3, or 4 of this ordinance may have their cases resolved by the following alternate dispositions:

A. A court-approved diversion program.

B. Dismissal of the case, if a letter is received from the Marion County Juvenile Department indicating that the offender has complied with all of its requirements related to the case and the court determines that it is in the interest of justice to dismiss the case.

Section 11. Abatement by the City. If the owner fails to abate the nuisance as ordered by the City Council, the city may cause the nuisance to be abated as provided in the City Nuisance Ordinance, Ordinance 2338.

Section 12. Repeal. Ordinance 2173 is hereby repealed.

Passed by the Council October 9, 2006 and approved by the Mayor October 11, 2006.

ORDINANCE NO. 2434

AN ORDINANCE CONCERNING THE CARE AND CONTROL OF ANIMALS; ESTABLISHING REGULATIONS AND PENALTIES; AND REPEALING ORDINANCE 1638.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For purposes of this Ordinance, these terms are defined as follows:

A. ANIMAL. Any nonhuman vertebrate.

B. ANIMAL CONTROL OFFICER. A person designated by the Woodburn Chief of Police to enforce this Ordinance.

C. AT LARGE. Any animal, excluding domestic cats, that is off the premises of its keeper and is not on a leash held by a person capable of controlling the animal.

D. DOG. Any mammal of the canidae family excluding, for purposes of this Ordinance, any dog used by a law enforcement agency in the performance of work.

E. EUTHANIZE. To put an animal to death in a humane manner by a licensed veterinarian or a certified euthanasia technician.

F. FOWL. Any chicken, duck, goose, guinea fowl, peafowl, peacock, turkey, dove, pigeon, game bird, or similar bird.

G. KEEP. To have physical custody or otherwise exercise dominion and control over.

H. KEEPER. A person or legal entity who owns, or has a possessory property right in an animal or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by that person.

I. LIVESTOCK. Animals, including but not limited to the following: (1) fowl; (2) horses; (3) mules; (4) burros; (5) asses; (5) cattle; (6) sheep; (7) goats; (8) llamas; (9)emu; (10) ostriches; (11) swine; or (12) any furbearing animal bred and maintained for commercial purposes and kept in pens, cages, or hutches.

J. MUNICIPAL JUDGE. The judge of the Woodburn Municipal Court.

K. PEACE OFFICER. Has the meaning provided in ORS 161.015 (4).

L. PERMIT. To allow, make possible, afford opportunity, acquiesce by failure, refusal or neglect to abate.

M. PERSON. Any natural person, association, partnership, firm or corporation.

N. PHYSICAL DEVICE OR STRUCTURE. A tether, trolley system, other physical control device or any structure made of material sufficiently strong to adequately and humanely confine the animal in a manner that would prevent it from escaping.

O. PHYSICAL INJURY. Physical impairment as evidenced by scrapes, cuts, punctures, bruises or physical pain.

P. SECURE ANIMAL SHELTER. An animal shelter that agrees to accept an animal and that agrees to the following conditions:

1. Not to release the animal from the shelter for the rest of the animal's natural life;

2. Not to allow the animal to come into contact with the general public for the rest of the animal's natural life;

3. To indemnify, defend, and hold the City harmless from any and all future claims of any kind or nature whatsoever relative to past or future care and custody of the dog and to the dog's future behavior;

4. To notify the City if the shelter goes out of business or can no longer keep the animal and to abide by the City's disposition instructions.

Q. SECURE ENCLOSURE. Shall be any of the following:

1. A fully fenced pen, kennel or structure that shall remain locked with a padlock or combination lock. Such pen, kennel or structure must have secure sides, minimum of five feet high, and a secure top attached to the sides, and a secure bottom or floor attached to the sides of the structure or the sides must be embedded in the ground no less than one foot to prevent digging under it. The structure must be in compliance with the City's building code and ordinances; or

2. A house or garage. When dogs are kept inside a house or garage as a secure enclosure, the house or garage shall have latched doors kept in good repair to prevent the accidental escape of the dog. A house, garage, patio, porch or any part of the house or condition of the structure is not a secure enclosure if the structure would allow the dog to exit the structure of its own volition

R. SERIOUS PHYSICAL INJURY. Any physical injury which creates a substantial risk of death or which causes disfigurement, or protracted loss or impairment of health or of the function of any body part or organ.

Section 2. <u>Keeping of Certain Animals Prohibited</u>.

A. No person shall keep any of the following animals of either thoroughbred or hybrid stock or pedigree:

1. All poisonous animals, including rear-fang snakes;

2. Apes such as chimpanzee (Pan), gibbons (Hylobates), gorillas (Gorilla), orangutans (Pongo), and siamangs (Symphalangus);
3. Baboons (Papio, Mandrillus);
4. Bears (Ursidae);
5. Bison (Bison);
6. Cheetahs (Acinonyx jubatus);
7. Constrictor snakes exceeding five feet in length;
8. Crocodilians (Crocodilia);
9. Coyotes (Canis latrans);
10. Deer (Cervidae), such as white-tailed deer, elk, antelope, and moose;
11. Elephants (Elephas and Loxodonta);
12. Game cocks and other fighting birds;
13. Hippopotami (Hippopotamidae);
14. Hyenas (Hyaenidae);
15. Jaguars (Panthera onca);
16. Leopards (Panthera pardus);
17. Lions (Panthera leo);
18. Lynxes (Lynx);
19. Monkeys, old world (Cercopithecidae), new world;
20. Ostriches (Struthio);
21. Piranha fish (Characidae);
22. Pumas (Felis concolor), such as cougars, mountain lions, and panthers;
23. Raptors, such as condors, eagles, kites, falcons, osprey, owls, harriers, hawks, buzzards and vultures (Falconiformes and Stigiformes orders)
24. Rhinoceroses (Rhinocero tidae);
25. Serval Cats (Felis serval or Leptailarus serval)
26. Sharks (Class Chondrichthyes);
27. Snow leopards (Panthera uncia);
28. Tigers (Panthera tigris); or
29. Wolves (Canis lupus and hybrids).

B. The provisions of this section shall not apply to:

1. An educational or medical institution, if the animal is kept for the primary purpose of instruction, study or research; or

2. A circus, carnival or other similar itinerant show business, if the animal is kept for the primary purpose of public entertainment; or

3. A veterinarian employed by the federal government or currently licensed by the Oregon State Veterinary Examining Board, if the animal is kept for the primary purpose of diagnosis or treatment.

Section 3. **Keeping of Livestock Generally Prohibited.** Except as permitted by this Ordinance, no person shall keep livestock.

Section 4. **Keeping of Limited Number of Chickens or Ducks Permitted.** Notwithstanding Section 3 of this Ordinance, a person shall be allowed to keep a total

of three or fewer chickens or ducks. The chickens or ducks kept under this section shall be enclosed in coops or pens and kept in a clean and sanitary condition. This section shall not be construed to as to allow the keeping of roosters, which are prohibited.

Section 5. Duties of Animal Keepers.

A. It shall be a violation of this Ordinance for a keeper of an animal to:

1. Permit an animal to be at large, except dogs in off-leash dog areas designated by the City Administrator or the City Administrator's designee.

2. Permit an animal to cause unreasonable noise at any time of the day or night by repeated barking, whining, screeching, howling, braying or other like sounds which may be heard beyond the boundary of the keeper's property.

3. Permit an animal to damage or destroy property of persons other than the keeper.

4. Fail to immediately remove any excrement or other solid waste deposited by an animal on public property or the property of another.

[Section 5 as amended by Ordinance 2471, passed September 27, 2010.]

Section 6. Placing of Poisonous Food Prohibited. No person shall knowingly place food of any description containing poisonous or other injurious ingredients in any area reasonably likely to be accessible to animals, except as provided by law for nuisance, vector, or predator control.

Section 7. Confining Animals in Motor Vehicles Prohibited.

A. No animal shall be confined within or on a motor vehicle at any location within the city under such conditions as may endanger the health or well-being of the animal, including but not limited to dangerous temperature, lack of food, water or confinement with a dangerous animal.

B. An animal control or police officer is authorized to remove an animal from a motor vehicle when the officer reasonably believes that the animal is confined in violation of this section. Any animal so removed shall be delivered to the Marion County Animal Control Shelter after the removing officer leaves written notice of the removal and delivery, including the officer's name, in a conspicuous, secure location on or within the vehicle.

Section 8. Dog Licensing. Any person owning or keeping a dog within the City shall purchase for such a dog a license as required under the provisions of ORS 609.100.

Section 9. Levels of Dangerous Dogs.

A. For purposes of this Ordinance, the classification of various levels of dangerous dogs shall be based upon these specific behaviors exhibited by the dogs.

1. Level 1 behavior is established if a dog, while at large, is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any person.

2. Level 2 behavior is established if a dog, while at large, bites or causes physical injury to any dog or cat.

3. Level 3 behavior is established if a dog bites or causes physical injury to any person.

4. Level 4 behavior is established if:

(a) A dog causes the serious physical injury or death of any person; or

(b) A dog, while at large, kills a dog or cat.

Section 10. Keeping of Dangerous Dog; Penalty; Defenses.

A. Any person who keeps a Level 1 Dangerous Dog commits a Class 4 civil infraction.

B. Any person who keeps a Level 2 Dangerous Dog commits a Class 3 civil infraction.

C. Any person who keeps a Level 3 Dangerous Dog commits a Class 2 civil infraction.

D. Any person who keeps a Level 4 Dangerous Dog commits a Class 1 civil infraction.

E. The following affirmative defenses may be presented:

1. The dog's behavior was the direct result of the victim abusing or tormenting the dog, or

2. The dogs' behavior was directed against a trespasser on the keeper's property.

Section 11. Keeping of Dog Pursuant to Court Order Permitted. Notwithstanding Section 10 of this Ordinance, dogs classified as dangerous dogs by the Municipal Judge may be lawfully kept pursuant to the terms of a Municipal Court order.

Section 12. Classification of Dogs by Municipal Judge.

A. In addition to any other penalties imposed under this Ordinance, the municipal judge shall have the power to classify dangerous dogs based upon the dogs' behavior. This classification shall be based upon evidence proving the dogs' behavior by a preponderance of the evidence.

Section 13. Disposition of Dangerous Dog Cases.

A. In addition to any other penalties imposed under this Ordinance, the keeper of a dog found by the municipal judge to be a dangerous dog shall be ordered by the court to do the following:

1. If the dog was found to have engaged in Level 1 behavior, the keeper shall provide a physical device or structure that prevents the dog from reaching any public right-of-way or adjoining property, and shall restrict the dog by such a device or structure whenever the dog is outside the keeper's home and not on a leash off the keeper's property.

2. If the dog was found to have engaged in Level 2 or Level 3 behavior, the keeper shall provide a secure enclosure and confine the dog within such enclosure whenever the dog is not on a leash, off the keeper's property or inside the home of the keeper.

Section 14. Disposition of Level 3 or 4 Dangerous Dog Cases.

A. If the dog was found by the municipal judge to have engaged in Level 3 or 4 behavior, the municipal judge shall provide an opportunity to the keeper and the City regarding the appropriate disposition of the dog.

B. If the dog was found by the Municipal Judge to have engaged in Level 4 behavior, the Municipal Judge shall order:

1. That the City euthanize the dog; or

2. That the dog be sent at the keeper's expense to a secure animal shelter; or

3, That the dog be removed from the City as specified in this Ordinance.

C. If the dog was found by the Municipal Judge to have engaged in Level 3 behavior, the Municipal Judge may order:

1. That the City euthanize the dog; or

2. That the dog be sent at the keeper's expense to a secure animal shelter; or

3. That the dog be removed from the City as specified in this Ordinance; or

4. That there be a different disposition of the case as determined to be fair and appropriate by the Court.

D. The keeper shall be responsible for all fees and charges related to the care, keeping, or euthanizing of the dog.

E. The municipal judge will consider ordering that the dog be sent to a secure animal shelter only at the request of the keeper. The keeper shall bear the burden of establishing that an animal shelter is available that meets the criteria for a secure animal shelter, that the shelter will accept the dog, and that the keeper is willing and able to pay all expenses for transporting and caring for the dog.

F. After conclusion of the hearing, the municipal judge shall issue an order finding that the dog has engaged in Level 3 or 4 behavior and providing for disposition of the dog. This order shall include findings justifying the Court's action. A copy of the order, including notice of the right to file a Writ of Review in Marion County Circuit Court shall be sent by regular and certified mail, return receipt requested, or delivered by personal service to the keeper of the dog.

Section 15. **Removal of Animals from the City** Prior to releasing an animal for removal from the City pursuant to this Ordinance the municipal judge shall require: (1) proof that an appropriate place outside of the incorporated limits of the City is available to keep the animal; (2) proof that the animal control authority in the jurisdiction to which the animal is being moved has been informed of the relocation and has had an opportunity to address the Court; (3) agreement by the animal's owner to indemnify, defend, and hold the City harmless from any and all future claims of any kind or nature whatsoever relative to past or future care and custody of the animal and to the animal's future behavior. If these requirements are not met, the Municipal Judge may order the animal seized and delivered to the Marion County Animal Control Shelter with instruction to dispose of the animal at the end of five days unless during that period, the owner sells the animal or meets the requirements under this section. The owner shall pay the costs of the action.

Section 16. **Shelter Operations; Impoundment, Release and Disposal.**

A. The Marion County Animal Control Shelter is designated as the facility to receive, care for and confine any animal delivered to its custody under the provisions of this Ordinance. This impound facility shall be operated by Marion County Animal Control for the conduct of necessary business concerning impounded animals. Impounded animals may be temporarily housed in a kennel designated by the Chief of Police prior to their transport to the Marion County Animal Shelter.

B. Impoundment is subject to the following holding period and notice requirements:

1. An animal bearing identification shall be held for five working days before any action is taken to dispose of the animal. The City shall make reasonable effort within twenty-four hours of impoundment to notify the keeper, shall send by

registered or certified mail, a written notice of the impoundment to the last known address of the keeper, advising the keeper of the impoundment, the date by which redemption must be made and the fees payable prior to redemption release.

2. An animal that does not bear identification shall be held for three working days before any disposition may be made.

3. Animals held for period prescribed herein, or as otherwise required by ORS 433.340 to 433.390, and not redeemed by the keeper, shall be subject to disposal consistent with Marion County Animal Control procedures.

4. In instances where a peace officer impounds animals from a person taken into custody, the peace officer shall issue a receipt to the person reciting the redemption requirements under this Ordinance and shall serve this receipt upon the person.

C. Unless restrained by Court order, the impound facility shall release any impounded animal to the keeper or the keeper's authorized representative upon payment of all applicable impoundment, shelter, care, medical costs, license fees or other applicable fees or deposits.

Section 17. Penalty for Unspecified Violations. The violation of any section of this Ordinance where the penalty is not specified constitutes a Class 4 civil infraction.

Section 18. Authorized Enforcement Officers. The following City officials are authorized to enforce this Ordinance:

A. An animal control officer;

B. A peace officer; and

C. The Woodburn City Administrator or designee.

Section 19. Animal Nuisance Enforcement. If there are reasonable grounds to believe that any animal constitutes a public nuisance, an action may be instituted by the City Attorney under Ordinance 2338, the Woodburn Nuisance Ordinance, as an additional remedy.

Section 20. Institution of Legal Proceedings. The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Ordinance as additional remedy.

Section 21. **Exclusive Review in Marion County Circuit Court.** All determinations by the municipal judge under this Ordinance shall be final and subject only to Writ of Review in the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 22. **Savings Clause**. The repeal of any ordinance by this Ordinance shall not preclude any action against any person who violated the ordinance prior to the effective date of this Ordinance.

Section 23. **Severability.** The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 24. **Repeal.** Ordinance No. 1638 is hereby repealed.

Passed by the Council March 24, 2008 and approved by the Mayor March 26, 2008.

ORDINANCE NO. 2521

AN ORDINANCE PROHIBITING RESIDENTIAL PARKING ON UNIMPROVED AREAS; ALLOWING THE PLACING OF CITATIONS ON ILLEGALLY PARKED VEHICLES AND PROVIDING FOR ENFORCEMENT PROCEDURES

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. For purposes of this Ordinance, an "Improved Area" is defined as an area surfaced with concrete, asphalt, gravel, or any other material commonly used for the parking of Motor Vehicles, but not including grass or dirt.

Section 2. For purposes of this Ordinance, a "Motor Vehicle" is defined as provided in the Oregon Vehicle Code, ORS Chapters 801 to 826.

Section 3. For purposes of this Ordinance, a "Person" is defined as any natural person, firm, partnership, association or corporation.

Section 4. It shall be unlawful for any Person to stop, stand, or park a Motor Vehicle on any lot with a residential zoning designation except on an Improved Area.

Section 5. When a motor vehicle without an operator is parked in violation of 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 instructing the operator to answer to the charge at the time and place specified in the citation.

Section 6. The presence of any motor vehicle in or upon any property, private or public, in violation of this Ordinance shall be prima facie evidence that the registered owner of the motor vehicle committed or authorized such violation.

Section 7. The prohibitions in this Ordinance shall not apply when an emergency requires that a Person stop, stand or park a Motor Vehicle on an area that is not an Improved Area.

Section 8. Each violation of any provision of this Ordinance constitutes a class 4 civil infraction and shall be dealt with according to the civil infraction procedures established by City ordinance.

Passed by the Council September 22, 2014, and approved by the Mayor September 24, 2014.

ORDINANCE NO. 1856

AN ORDINANCE APPOINTING A HEARINGS OFFICER TO PRESIDE OVER ABANDONED VEHICLE HEARINGS PURSUANT TO O.R.S. CHAPTER 483 AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Appointment**. The Council, pursuant to O.R.S. 483.357 appoints the Woodburn Municipal Judge as a hearings officer with the powers and functions set forth in O.R.S. Chapter 483.

Section 2. **Service**. The Municipal Judge shall serve in the capacity of hearings officer pursuant to O.R.S. Chapter 484 and shall serve at the pleasure of the Council.

Section 3. [Emergency clause.]

Passed by the Council February 13, 1984, and approved by the Mayor February 14, 1984.

ORDINANCE NO. 1957

AN ORDINANCE DESIGNATING TRUCK ROUTES; PROHIBITING USE GENERALLY OF OTHER STREETS, ROADS AND HIGHWAYS FOR OPERATION OF TRUCKS, OR HEAVY VEHICLES, AND PROHIBITING USE OF AIR EXHAUST BRAKES.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purposes of this ordinance the following definitions apply:

(1) "Motor Truck" for this ordinance means every motor vehicle used or maintained primarily for the transportation of property and having a gross weight in excess of 10,000 pounds, excluding recreational vehicles, emergency governmental vehicles, up to one-ton pickups, tow trucks, busses and city franchised vehicles.

(2) "Truck Trailer" means every vehicle without motive power which:

(a) Has a combined weight of vehicle and maximum load to be carried thereon of more than 10,000 pounds.

(b) Is designated for carrying property and for being drawn by a motor vehicle.

(3) "Truck Tractor" means any motor vehicle used or designed for use with a semi-trailer for carrying, conveying, or moving over the highways any freight, property, article or thing, and having a combined weight of vehicle and maximum load to be carried thereon of more than 10,000 pounds.

(4) "Truck Route" means a street, alley, or other public right-of-way which has been designated by this ordinance as an acceptable roadway for the through-city transportation of motor trucks, truck trailers, and truck tractors.

(5) "Truck Way" means a street, alley, or other public right-of-way which has been designated by this ordinance as an acceptable roadway for the commercial operation of motor trucks, truck trailers, and truck tractors, but does not constitute a through-city route necessary for specialized traffic directional control signs.

Section 2. Motor Truck Traffic Prohibited.

(1) Except as provided in subsection (2), no person shall operate any motor truck upon any public street or alley within the city unless such street or alley has been designated as a truck route or truck way.

(2) It shall be an affirmative defense to a violation of Section 2(1) that the motor truck is being operated on a public street or alley for the primary purpose of engaging in one or more of the following activities:

(a) Receiving or discharging goods at any location in the city;

(b) Going to or from a business in the city for the purpose of fuel, service, or repair; or

(3) Servicing utility facilities or construction sites in the city.

(3) Motor trucks operated on a public street or alley for the primary purpose of engaging in one or more of the activities listed in Section 3(2) shall use only designated truck routes or truck ways prior to the point where the activity requires a different route of travel. (Section 2 amended by Ordinance 2169 passed by the Council May 13, 1996.)

Section 3. **Truck Routes and Truck ways Established.**

(1) Those streets, roads, and highways located within the limits of the city of Woodburn, shown on Schedule "A" and Schedule "B" are hereby designated as truck routes and truck ways.

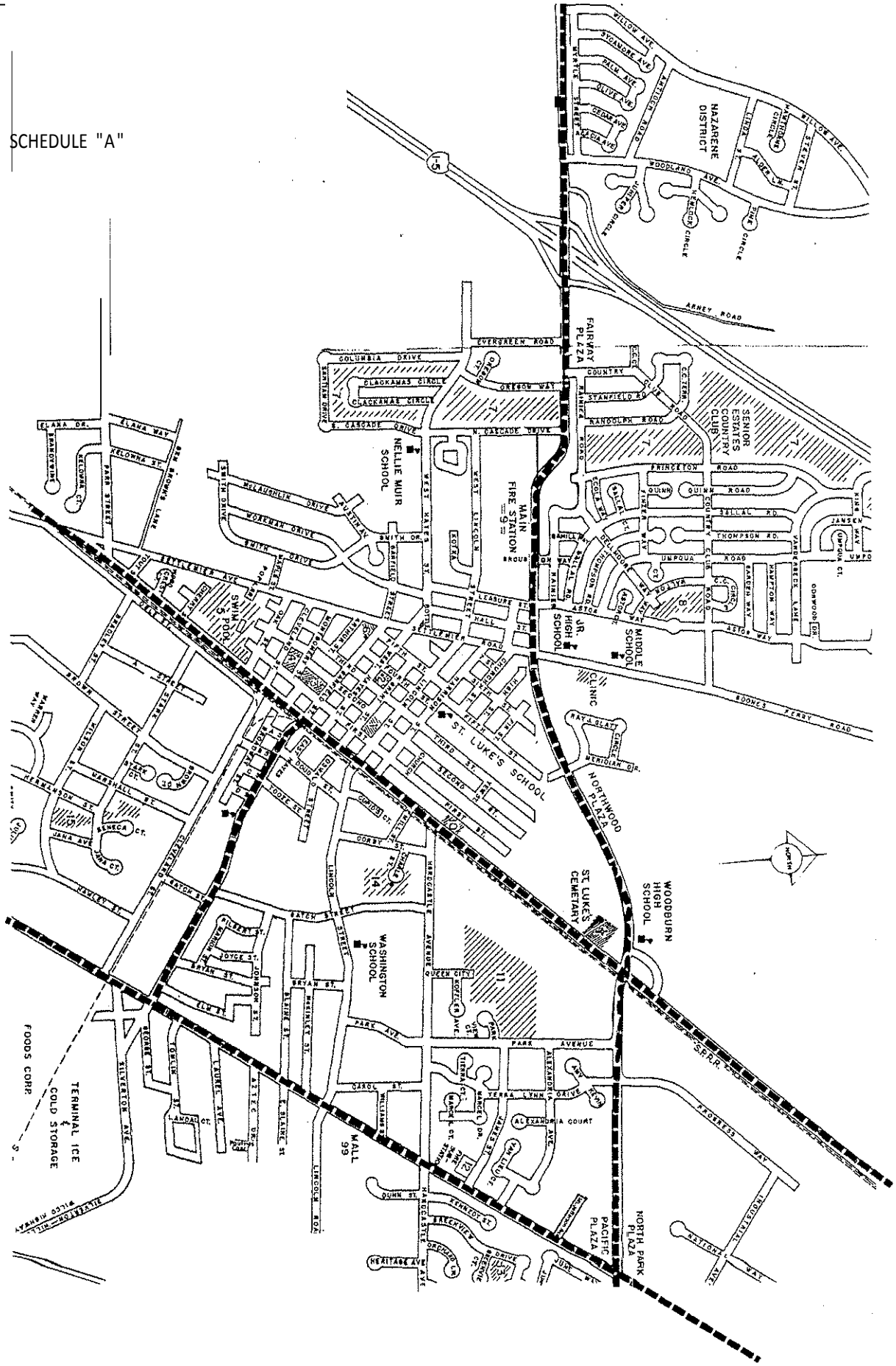
(2) The Public Works Director is hereby authorized and directed to erect and maintain specialized traffic directional control signs on designated truck routes in a conspicuous manner and place at each end of the roadway or section thereof in order to give notice of such regulation.

Section 4. The use of air exhaust brakes (jake brakes) on city streets, alleys and right-of-ways within the city of Woodburn is prohibited.

Section 5. **Civil Infraction Assessment**. A violation of any provision of this ordinance constitutes a class 5 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 5 as amended by Ordinance 2008 passed October 24, 1988.]

Passed by the Council July 28, 1986 and approved by the Mayor July 30, 1986.

SCHEDULE "A"


NAZARENE DISTRICT
WOODLAND AVE
ARNEY ROAD
FAIRWAY PLAZA
EVERGREEN ROAD
COLUMBIA DRIVE
CLACKAMAS CIRCLE
OREGON WAY
N. CASCADE DRIVE
SENIOR ESTATES COUNTRY CLUB
PRINCETON ROAD
QUINN ROAD
THOMPSON RD.
UMPQUA ROAD
JANSEN WAY
NELLIE MUIR SCHOOL
MAIN FIRE STATION
WEST LINCOLN
WEST HAYES ST.
SMITH DRIVE
WORKMAN DRIVE
MELAUGHLIN DRIVE
ELANA DR.
ELANA WAY
KELOWNA ST.
PARK STREET
SWIM POOL
JR. HIGH SCHOOL
MIDDLE SCHOOL
CLINIC
BOONES FERRY ROAD
ST. LUKE'S SCHOOL
NORTHWOOD PLAZA
MERIDIAN DR.
BROWN STREET
MARSHALL ST.
HERMANSON ST.
SENECA CT.
JANA AVE
HAYES ST.
EATON ST.
EATON STREET
LINCOLN STREET
HERMOSA AVE
QUEEN CITY
ST. LUKES CEMETARY
WOODBURN HIGH SCHOOL
WASHINGTON SCHOOL
PARK AVE
PARK AVENUE
BRYAN ST.
ELM ST.
MCKINLEY ST.
BLAINE ST.
E. BLAINE ST.
LINCOLN ROAD
CAROL ST.
YERA LYNN DRIVE
ALEXANDRIA COURT
MALL 99
DUNN ST.
HERITAGE AVE
HERITAGE WAY
PACIFIC PLAZA
NORTH PARK PLAZA
S.P.R.R.
ROGERS WAY
NATIONAL WAY
SILVERTON AVE
TERMINAL ICE & COLD STORAGE
FOODS CORP.
NORTH

SCHEDULE "B"

TRUCK ROUTES

1. Highway 99E from North to South city limits.
2. Highway 214 from East to West city limits.
3. Highway 214 from 99-# to East city limits.

TRUCK WAYS

1. Parr Road from West city limits to Front Street.
2. Mill Street from Front Street to Corby Street.
3. Hardcastle Avenue from Front Street to Corby Street
4. Progress Way.
5. Industrial Avenue.
6. National Way.
7. Birds Eye Avenue.
8. Front Street from North to South city limits.
9. Young Street from Front Street to 99-E.

[As amended by Ordinance 2528 passed September 14, 2015]

ORDINANCE NO. 1988

AN ORDINANCE PROHIBITING ON-STREET AND PUBLIC PLACE PARKING IN A PORTION OF THE DOWNTOWN AREA TO PREVENT INTERFERENCE WITH STREET CLEANING OPERATIONS, PROVIDING FOR CIVIL ENFORCEMENT, REPEALING ORDINANCE 1986, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose**. The City Council finds that the public safety responsibilities associated with street cleaning and general maintenance in the downtown business district are paramount to providing for the general welfare and encouraging the flow of goals and services. In addition, the limited clearing of on-street parking spaces and public place parking spaces will facilitate a safe, effective, and efficient maintenance operation for the public's benefit.

Section 2. **Definitions.** In addition to those definitions contained in the "Oregon Vehicle Code," the following definitions apply:

(A) "Administrator" shall mean the City Administrator or his designee.

(B) "Public Parking Space" shall mean every public way, road, street, thoroughfare, and place open, used or intended for use by the general public for parking motor vehicles.

(C) "Downtown Parking District" shall mean an area composed by the following street boundaries as referenced in Attachment "A".

(1) The East and West sides of Front Street between Cleveland and Hardcastle.

(2) The East and West sides of First Street between Harrison and Cleveland Streets.

(3) The West side of Second Street between Cleveland and Grant Streets, and the East side of Second Street between Garfield and Grant Streets.

(4) The North and South sides of Harrison, Lincoln, Garfield and Arthur Streets between Front and First Streets.

(5) The North and South sides of Grant and Hayes Streets between Front and Second Streets.

(6) The North side of Montgomery Street between First and Second Streets.

(7) The North side of Cleveland Street between First and Second Streets.

(8) The North and South sides of Cleveland Street between Front and First Street.

(D) "Enforcement Officer" shall mean the Police Chief or his designee.

Section 3. General Provisions.

(A) In addition to the applicable sections of the "Oregon Vehicle Code" prohibiting parking, no person shall park or stand a motor vehicle in a public parking place within the Downtown Parking District between the hours of 3:00 a.m. - 6:00 a.m. upon the day(s) of the week so posted by a lawfully erected parking limitation sign for the clearance of motor vehicles on account of public street cleaning and maintenance operations.

(B) The prohibition contained in subsection 3(A) of this ordinance above shall not apply upon the legal holidays observed by the City of Woodburn.

Section 4. Administration.

(A) The Administrator shall be responsible for the installation and maintenance of applicable parking signs and the conduct of business operations associated with street cleaning and maintenance within the Downtown Parking District.

(B) Enforcement of the provisions of this ordinance shall be the duly of the enforcement officer.

(C) A parking citation issued in violation of this ordinance shall be placed on or in such motor vehicle in accordance with the "Oregon Vehicle code".

Section 5. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 5 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 5 as amended by Ordinance 2008 passed October 24, 1988.]

Section 6. Towing and Storage.

(A) Any motor vehicle violating the provisions of this ordinance shall constitute a hazard to public safety and the enforcement officer shall cause the motor vehicle to be towed and stored at the registered owner's expense if left unattended. The registered owner shall be liable for the costs of towing and storing, even if the vehicle was parked by another person.

(B) Towing and storage of any motor vehicle pursuant to this ordinance does not preclude the issuance of a citation for a violation of any provision of this ordinance.

Section 7. Disposal of Motor Vehicle. After a motor vehicle is towed under the authority of this ordinance it shall be disposed of in the manner provided by ORS 819.180 to ORS 819.260.

Section 8. **Severability**. If any section, clause, or phrase of this ordinance or its application to any statute, is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remainder of this ordinance or its application.

Section 9. **Repeal**. Ordinance No. 1986 is hereby specifically repealed.

Section 10. [Emergency clause.]

Passed by the Council January 25, 1988 and approved by the Mayor January 27, 1988.

ORDINANCE NO. 2257

AN ORDINANCE PERMITTING THE USE OF GOLF CARTS IN DESIGNATED AREAS; REGULATING SUCH USE PURSUANT TO THE REQUIREMENTS OF STATE LAW; REPEALING ORDINANCE NO. 1841; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

(1) "Golf cart," is defined, as it is in ORS 801.295, as a motor vehicle that has not less than three wheels in contact with the ground, has an unloaded weight less than 1,300 pounds, is designed to be and is operated at not more than 15 miles per hour, and is designed to carry golf equipment and not more than two persons, including the driver.

(2) "Senior Estates," is defined as the areas platted as Woodburn Senior Estates, which is described as follows: Woodburn Senior Estates No. 2, Subdivision of Block No. 23 of Woodburn Senior Estates No. 2; Woodburn Senior Estates No. 3; Woodburn Senior Estates No. 4; Woodburn Senior Estates No. 5; Resubdivision of a portion of Woodburn Senior Estates No. 5, Blocks 48, 49, 50, 51, 52 & 53; Woodburn Senior Estates No. 6; Woodburn Senior Estates No. 7; Woodburn Senior Estates No. 7A; Woodburn Senior Estates No. 8 as filed with Marion County.

(3) "Woodburn Crossing" is defined as the shopping center located on the commercial properties to the northwest of the intersection of Highway 214 and Country Club Road, City of Woodburn, and lying immediately adjacent to Senior Estates.

Section 2. Where Golf Carts Are Permitted. Golf carts are permitted to be used on all of the streets in the areas known as Senior Estates and Woodburn Crossing as described in Section 1. No such permission is intended or implied for any public way other than those within the boundaries described. Golf carts may be operated between the golf course and the place where golf carts are parked or stored or located within or bounded by Senior Estates, as provided for in ORS 810.070.

Section 3. Qualifications of Drivers. Drivers of golf carts shall obtain and have in their possession a valid Oregon Drivers License or Oregon Department of Motor Vehicles Golf Cart Permit when operating golf carts under this ordinance.

Section 4. Regulations for Use of Golf Carts. Golf carts shall be operated only during daylight hours, and shall observe all applicable requirements of state traffic law. Golf carts shall yield the right of way to motor vehicles and pedestrians when crossing a public street.

Section 5. **Oregon Highway 214**. The operation of golf carts shall not be allowed on any portion of the public highway known as Oregon Highway 214. The crossing of Highway 214 at Oregon Way and Country Club Road or any other location is prohibited. Golf carts shall use the golf course tunnel under Highway 214 to get from one side of the highway to the other.

Section 6. **Registration and Licensing Exemption**.
Golf carts operated pursuant to this ordinance shall be exempt from registration and licensing as provided in ORS 820.210.

Section 7. **Vehicle Equipment Exemption**. Golf carts operated pursuant to this ordinance shall be exempt from vehicle equipment laws as provided for in ORS 810.070.

Section 8. **Liability**. The operation of golf carts under this Ordinance shall be totally the risk and responsibility of the operator. The City, by passing this Ordinance of permission and designation under state law, assumes no responsibility for the operation of the golf carts and shall be held harmless in any action arising from the operation of golf carts on or off any public way within the City.

Section 9. **Repeal.** Ordinance No. 1841 is hereby repealed.

Section 10. [Emergency clause.]

Passed by the Council February 14, 2000 and approved by the Mayor February 15, 2000.

ORDINANCE NO. 2262

AN ORDINANCE PROHIBITING PUBLIC PLACE PARKING IN A PORTION OF THE DOWNTOWN AREA TO PREVENT INTERFERENCE WITH SATURDAY MARKET OPERATIONS, PROVIDING FOR CIVIL ENFORCEMENT, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose.** The City Council finds that the Saturday Market serves a public purpose and is conducted on premises open to the public. The limited clearing of public parking spaces will facilitate a safe, effective, and efficient operation of the Saturday Market.

Section 2. **Definitions.** In addition to those definitions contained in the "Oregon Vehicle Code," the following definitions apply:

(A) "Administrator" shall mean the City Administrator or designee.

(B) "Public Parking Space" shall mean every public way, road, street, thoroughfare, and place open, used or intended for use by the general public for parking motor vehicles.

(C) "Downtown Parking Lot" shall mean the parking lot bordered by Garfield Street on the South side, North First Street on the West Side, and West Hayes Street on the North side and which is described as Township 5 South, Range 1 West, Section 18AB of the Willamette Meridian, Tax Lots 2800 and 3200.

Section 3. **General Provisions.** In addition to the applicable sections of the "Oregon Vehicle Code," prohibited parking, no person shall park or stand a motor vehicle in a public parking place within the Downtown Parking Lot between the hours of 12:00 a.m. Friday and 3:00 p.m. Saturday as posted by a lawfully erected parking limitation sign for the clearance of motor vehicles on account of Saturday Market operations. This section shall not apply to vehicles which are necessary for Saturday Market operations.

Section 4. **Administration.** The Administrator shall be responsible for the installation and maintenance of applicable parking signs and for the enforcement of this ordinance.

Section 5. **Civil Infraction Assessment**. A violation of any provision of this ordinance constitutes a Class 5 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998.

Section 6. Towing and Storage.

(A) Any motor vehicle violating the provisions of this ordinance shall constitute a hazard to the public safety and may be towed and stored at the registered owner's expense if left unattended. The registered owner shall be liable for the cost of towing and storage, even if the vehicle was parked by another person.

(B) Towing and storage of any motor vehicle pursuant to this ordinance does not preclude the issuance of a citation for violation of any provision of this ordinance.

Section 7. Disposal of Motor Vehicle. After a motor vehicle is towed under the authority of this ordinance, it shall be disposed of in the manner provided by ORS 819.180 to ORS 819.260.

Section 8. Severability. If any section, clause, or phrase of this ordinance or its application to any statute, is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remainder of this ordinance or its application.

Section 9. [Emergency clause.]

Passed by the Council May 4, 2000 and approved by the Mayor May 5, 2000.

ORDINANCE 2285

AN ORDINANCE REGULATING MOTOR VEHICLE, BICYCLE AND PEDESTRIAN TRAFFIC WITHIN THE CITY OF WOODBURN; REPEALING ORDINANCES 1904, 2078 AND 2191; AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Short Title.** This ordinance may be cited as the "City of Woodburn Traffic Ordinance."

Section 2. **Definitions.**

(1) The definitions contained in the Oregon Vehicle Code, ORS Chapter 801, as constituted on the date this ordinance takes effect, are hereby incorporated by reference.

(2) As used in this Ordinance, the following words and phrases mean:

(a) **Bus stop**. A space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

(b) **Chief of Police.** The Chief of Police of the City of Woodburn or designee.

(c) **City**. The City of Woodburn.

(b) **City Administrator.** The City Administrator of the City of Woodburn or designee.

(d) **Council.** The City Council of the City of Woodburn.

(e) **Emergency**. A situation where an unforeseen combination of circumstances calls for immediate action in order to avoid damage to a vehicle or where a vehicle was rendered inoperable but does not include a situation where the vehicle is left standing in excess of 24 hours.

(f) **Holiday**. New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other day proclaimed by the Council to be a holiday.

(g) **Loading zone**. 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.

(h) **Parade.** Any march, demonstration, procession or motorcade consisting of persons, animals, or vehicles or a combination thereof upon the streets, parks or other public grounds within the City with an intent of attracting public attention that interferes with the normal flow or regulation of traffic upon the streets, parks or other public grounds.

(i) **Person**. A natural person, firm, partnership, association, or corporation, company or organization of any kind.

(j) **Street**. Any place or way set aside or open to the general public for purposes of vehicular traffic.

(k) **Traffic lane**. That area of the highway used for or designated for the movement of a single line of traffic.

(l) **Truck**. A motor vehicle designed and used primarily for drawing other vehicles, such as truck trailers, or for carrying loads other than passengers, and subject to state licensing for ten thousand (10,000) pounds or more gross vehicle weight.

(m) **Truck Trailer**. Any trailer designed and used primarily for carrying loads other than passengers whether designed as a balance trailer, pole trailer, semi-trailer or self-supporting trailer.

Administration

Section 3. Powers of the Council. Subject to state law, the Council constitutes the City road authority under ORS 810.010 and is empowered with all municipal traffic authority for the City except those powers specifically and expressly delegated herein or by another ordinance.

Section 4. Duties of the City Administrator. The City Administrator shall implement the ordinances, resolutions and motions of the Council. Installation of traffic control devices shall be based on the standards contained in the Oregon Manual on Uniform Traffic Control Devices for Streets and Highways.

Section 4A. Duties of Chief of Police. In addition to any other duties provided herein, the Council delegates to the Chief of Police the authority under ORS 810.030 to impose temporary street closures for a period not to exceed 14 days. Temporary street closures may be made because of traffic accidents or hazards, construction activity, natural disasters, special events, or any other reason where temporary closure is necessary to protect the interest and safety of the general public. (Section 4A added by Ordinance 2323 adopted July 17, 2002.)

Section 5. Public Danger. Under conditions constituting a danger to the public, the City Administrator may install temporary traffic control devices which are determined to be necessary.

Section 6. **Standards**. The regulations of the Mayor and City Council or its designate shall be based upon:

(1) Traffic engineering principles and traffic investigations.

(2) Standards, limitations and rules promulgated by the Oregon Transportation Commission.

(3) Other recognized traffic control standards.

Section 7. **Authority to Enforce Ordinance**. Police officers as defined by ORS 801.395 and all other City employees designated by the City Administrator have the authority to enforce the provisions of this Ordinance.

Section 8. **Alteration of Traffic Control Devices Prohibited.** No unauthorized person shall install, move, remove, alter the position of, or deface or tamper with a traffic control device.

Section 9. **Presumption that Traffic Control Device was Lawfully Authorized and Installed.** A traffic control device is presumed to be lawfully authorized and installed unless the contrary is established by competent evidence.

General Regulations

Section 10. **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.

Section 11. **Unlawful Riding.**

(1) 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.

(2) No person shall board or alight from a vehicle while the vehicle is in motion upon a street.

Section 12. **Prohibited Devices**. No person shall use the streets for traveling on skis, toboggans, sleds, skates, skateboards roller blades or other similar devices.

Section 13. **Removing Glass and Debris**. A party to a vehicle accident or a person causing broken glass or other debris to be deposited upon a street shall remove the glass and other debris from the street.

Section 14. Obstructing Streets. No unauthorized person shall obstruct the free movement of motor vehicles or pedestrians using the streets.

Section 15. Storage of Vehicles on Streets. No person shall store or permit to be stored on a street or other public property, without permission of the City, a vehicle or personal property. Failure to remove a vehicle or other personal property for a period of 72 hours shall constitute prima facie evidence of storage of a vehicle.

Section 16. Storage and Parking Trucks, Trailers, Boats, Campers, Car Units and Other Vehicles.

(1) No person shall park a truck or truck trailer upon any street, alley, avenue or public way in any residential area of the City adjacent to any residence, church, school, hospital, multiple dwelling, park or playground in any area of the City. The provisions of this section shall not be deemed to prohibit the lawful parking of such equipment upon any street, avenue or public way in the City for the actual loading or unloading of goods or to make repairs necessitated by an emergency.

(2) No person shall park a bus or vacation house trailer, camper, boat and/or boat trailer, motor home, tent trailer, utility trailer, or any motorized or unmotorized vehicle on any street or on any avenue or public way within the City for longer than 72 hours.

Section 17. Calculation of Time of Storage. When calculating hours under Sections 15 and 16 of this Ordinance, the continuity of time shall not be deemed broken by the movement of the motor vehicle or personal property elsewhere on the block unless the movement removes the motor vehicle or personal property from the block where it is located before it is returned.

Parking Regulations

Section 18. Method of Parking.

(1) 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 motor vehicle makes compliance impossible, within a single marked space.

(2) The operator who first begins maneuvering a motor vehicle into a vacant parking space on a street shall have priority to park in the space, and no other motor vehicle operator shall attempt to interfere.

(3) Whenever the operator of a vehicle discovers the 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 the police or fire officers.

Section 19. **Prohibited Parking or Standing** . In addition to the state motor vehicle laws prohibiting parking, no person shall park or stand:

(1) A vehicle in an alley other than for the expeditious loading or unloading of persons or materials, and in no case for a period in excess of 30 consecutive minutes.

(2) A motor vehicle upon a street for the principal purpose of:

(a) Displaying the vehicle for sale.

(b) Repairing or servicing the vehicle, except to make repairs necessitated by an emergency.

(c) Displaying advertising from the vehicle.

(d) Selling merchandise from the vehicle, except when authorized.

(3) A motor vehicle parked in such a manner that it damages or causes to be damaged any public improvement within the City including streets, alleys, or other public ways. The person who parked the vehicle shall be liable to the City for the damage caused thereby.

Section 20. **Affirmative Defense of Emergency Repairs.** Under Sections 15, 16 and 19 of this Ordinance, it shall be an affirmative defense that the prohibited parking was necessitated by an emergency and the defendant shall have the burden of proving the existence of the emergency by a preponderance of the evidence.

Section 21. **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 loading zone shall not exceed 30 minutes.

Section 22. **Unattended Vehicles**. Whenever a police officer finds a motor vehicle parked unattended with the ignition key in the vehicle, the police officer is authorized to remove the key from the vehicle and deliver the key to the person in charge of the police station.

Section 23. **Standing or Parking of Buses**. The operator of a bus shall not stand or park the vehicle upon a street in a business district at a place other than a bus stop, except that this provision shall not prevent the operator from temporarily stopping the bus outside a traffic lane while loading or unloading passengers.

Section 24. **Restricted Use of Bus Stops**. No person shall stand or park a vehicle other than 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 waiting to enter or about to enter the restricted zone.

Section 25. **Extension of Parking Time.** Where maximum parking time limits are designated by sign, movement of a vehicle in a block shall not extend the time limits for parking.

Section 26. **Exemption**. The provisions of this ordinance regulating the parking or standing of vehicles shall not apply to a 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 operated by the United States while in use for the collection, transportation or delivery of mail.

Abandoned Vehicles

Section 27. **Authority Over Abandoned Vehicles within City.** City police officers and code enforcement personnel employed by the City and supervised by the Chief of Police shall have authority pursuant to ORS 819.140(1)(c) to take abandoned vehicles into custody and exercise powers over abandoned vehicles pursuant to state law.

Section 28. **Abandoned Vehicle Procedure.** All abandoned vehicles shall be processed under the provisions of state law.

Bicycles

Section 29. **Bicycle Operating Rules**. In addition to observing all other applicable provisions of this ordinance and state law pertaining to bicycles, a person shall:

(1) Not leave a bicycle, except in a bicycle rack. If no bike rack is provided, the person shall leave the bicycle so as not to obstruct any roadway, sidewalk, driveway or building entrance. A person shall not leave a bicycle in violation of the provisions relating to the parking of motor vehicles.

(2) Not ride a bicycle upon a sidewalk within the downtown core area bounded on the north by Harrison Street, on the west by Second Street, on the south by Cleveland Street, and on the east by Front Street.

Section 30. **Licensing**. The owner or lawful possessor of a bicycle may obtain a license in the following manner:

(1) The police department shall issue licenses and in so doing, shall obtain and record the name and address of each person purchasing a license and the make, model and serial number (if any) of the bicycle.

(2) A number shall be assigned to each bicycle so licensed, and a record of the license issued shall be maintained as part of the police records. A license plate assigned shall be affixed to the frame of the bicycle.

(3) A fee for a bicycle license shall be $1.00; all license fees collected shall be paid over to the general fund.

Section 31. Impounding of Bicycles.

(1) No person shall leave a bicycle on public or private property without the consent of the person in charge or the owner thereof.

(2) A bicycle left on public property for a period in excess of 24 hours may be impounded by the police department.

(3) In addition to any citation issued, a bicycle parked in violation of this ordinance may be immediately impounded by the police department.

(4) If a bicycle impounded under this ordinance is licensed, or other means of determining its ownership exist, the police shall make reasonable efforts to notify the owner.

(5) A bicycle impounded under this ordinance which remains unclaimed shall be disposed of in accordance with the city's procedures for disposal of abandoned or lost personal property.

Pedestrians

Section 32. Right Angles. A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk.

Section 33. Use of Available Crosswalk. No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks or if within 150 feet of a marked crosswalk.

Section 34. Skates, Skateboards, and Roller blades. No person shall use skates, skateboards, roller blades or other similar devices upon a sidewalk within the downtown core area bounded on the north by Harrison Street, on the west by Second Street, on the south by Cleveland Street, and on the east by Front Street.

Funeral Processions

Section 35. Funeral Processions.

(1) A funeral procession shall proceed to the place of interment by the most direct route which is both legal and practical.

(2) The procession shall be accompanied by adequate escort vehicles for traffic control purposes.

(3) All motor vehicles in the procession shall be operated with their headlights turned on.

(4) No person shall unreasonably interfere with a funeral procession.

(5) No person shall operate a vehicle which is not a part of the procession between the vehicles of a funeral procession.

Parades

Section 36. Permit Required. No person shall engage in or conduct any parade unless a permit is issued by the Chief of Police.

Section 37. Parade Permit Application.

(1) Application for a parade permit shall be made, except for a funeral procession, to the Chief of Police at least seven days prior to the intended date of parade, unless the time is waived by the Chief of Police.

In considering whether to waive the minimum time within which an application for a permit must be made, the Chief of Police shall consider the following factors:

(a) Whether the size, route or nature of the proposed parade is such that additional law enforcement or other resources are required;

(b) Time needed to inform the public of the parade in order to minimize public inconvenience.

(2) Applications shall be signed by the applicant and include the following information:

(a) The name, address and telephone number of the persons responsible for the proposed parade.

(b) The name, address and telephone number of the headquarters of the organization for which the parade is to be conducted, if any, and the authorized and responsible heads of the organization

(c) The requested date of the proposed parade.

(d) The desired route, including assembling point.

(e) A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traveled.

(f) The location by street of any assembly areas for such parade.

(g) The number of persons, vehicles and animals which will be participating in the parade.

(h) The estimated number of spectators.

(i) A description of any recording equipment, sound amplification equipment, banners, signs, or other attention-getting devices to be used in connection with the parade.

(j) The intervals of space to be maintained between units of such parade.

(k) The proposed starting and ending times.

Section 38. **Standards for Issuance**

(1) The Chief of Police shall issue a parade permit as provided for herein when, from a consideration of the application and from such other information as may otherwise be obtained, the Chief of Police finds that:

(a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;

(b) The conduct of the parade will not require the diversion of so great a number of City police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the City;

(c) The concentration of persons, animals, and vehicles at public assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such public assembly areas;

(d) The conduct of the parade is not reasonably likely to cause injury to persons or property;

(e) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route;

(f) Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;

(g) There are sufficient parking places near the site of the parade to accommodate the number of vehicles reasonably expected;

(h) No parade permit application for the same time and location is already granted or has been received and will be granted.

Section 39. Denial of Permit. If the Chief of Police denies the permit based upon the standards for issuance specified in Section 38, written findings shall be issued specifying the reasons for the decision and a copy of the findings shall be furnished to the applicant.

Section 40. Alternative Permit.

(1) The Chief of Police, in denying an application for a parade permit, may authorize the conduct of the parade at a date, time, location, or route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within five (5) days after notice of the action of the Chief of Police, file a written notice of acceptance with the Chief of Police.

(2) An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit issued under this Ordinance.

Section 41. Notification of Decision.

(1) The Chief of Police shall notify the applicant of the decision within five days of receipt of the application.

(2) If the Chief of Police requires an alternate route or an alternate date or refuses to issue a permit, the applicant shall have the right to appeal this decision to the Council.

Section 42. Appeal to Council.

(1) The applicant may appeal the decision of the Chief of Police by filing a written request of the appeal with the City Recorder within five days after the Chief of Police has proposed alternatives or refused to issue a permit.

(2) The Council shall schedule a hearing date which shall not be later than the second regular session following the filing of the written appeal with the City Recorder and shall notify the applicant of the date and time that he may appear either in person or by a representative.

Section 43. Public Conduct During Parades.

(1) No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or with any person, vehicle or animal participating or used in a parade.

(2) No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.

(3) The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade.

Section 44. Prohibited Conduct. The following prohibitions shall apply to all parades:

(1) It shall be unlawful for any person to stage, present, or conduct any parade without first having obtained a permit as herein provided;

(2) It shall be unlawful for any person to participate in a parade for which the person knows a permit has not been granted;

(3) It shall be unlawful for any person in charge of, or responsible for the conduct of, a duly licensed parade to knowingly fail to comply with any condition of the parade permit;

Section 45. Permit Revocable. The City Administrator may revoke a parade permit if:

(1) An imminent threat of violence and personal injury to the parade participants exists, all reasonable efforts to protect the parade participants have failed, and a request to disband the parade made to the parade organizers has been refused;

(2) Actual violence that endangers public safety has been caused by parade participants and public safety cannot be protected without revocation of the permit; or

(3) There is significant deviation from the route designated in the application or approval, or assembly at points not shown in the application or approval, which occurs without approval of the Chief of Police.

Parking Citations and Owner Responsibility

Section 46. Citation on Illegally Parked Vehicle. Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this ordinance or state law, 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 instructing the operator to answer to the charge and at the time and place specified in the citation.

Section 47. Owner Responsibility. The owner of a vehicle placed in violation of a parking restriction shall be responsible for the offense, except when the use of the vehicle was secured by the operator without the owner's consent.

Section 48. **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.

Impoundment and Penalties

Section 49. **Authority to Impound Improperly Parked Vehicles.** When any unattended vehicle is parked upon a street, alley or public way of the City in such a manner that it is unlawfully parked in any prohibited or restricted area or is unlawfully parked for a length of time prohibited by this Ordinance, such vehicle is declared by the Council to be a public nuisance and it shall be subject to abatement, removal and impounding in accordance with the procedures provided for abandoned vehicles pursuant to state law.

Section 50. **Civil Infraction Assessment.** Each violation of any provision of this Ordinance constitutes a class 4 civil infraction and shall be dealt with according to the procedures established by City ordinance.

General

Section 51. **Severability Clause**. If a portion of this ordinance is for any reason held to be invalid, such decision shall not affect validity of the remaining portions of this ordinance.

Section 52. **Repeal**. Ordinances 1904, 2078 and 2191 are hereby repealed.

Section 53. **Saving Clause.** The repeal of any ordinance by this Ordinance shall not preclude any action against any person who violated the ordinance prior to the effective date of this ordinance.

Section 54. **Emergency Clause**. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

ORDINANCE NO. 2404

AN ORDINANCE ESTABLISHING A POLICE TRAINING ASSESSMENT TO BE IMPOSED IN TRAFFIC VIOLATION CASES

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Whenever the Woodburn Municipal Court imposes a fine or orders a forfeiture for a traffic violation, a Police Training Assessment in an amount of $5.00 shall be imposed in addition to the amount of the fine or forfeiture.

Section 2. Proceeds from the payment of Police Training Assessments shall be used for Woodburn Police Department training.

Section 3. The Woodburn City Council determines that the Police Training Assessment does not constitute a tax under the Oregon Constitution and is not subject to the property tax limitation of Article XI, Section 11(b).

Passed by the Council July 10, 2006 and approved by the Mayor July 12, 2006.

ORDINANCE NO. 2464

AN ORDINANCE PROVIDING FOR THE REGULATION OF TAXICABS; TAXICAB DRIVERS; TAXICAB COMPANIES; AND SETTING AN EFFECTIVE DATE

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions

A. Certified Mechanic. A mechanic who meets all the following criteria:

1. Does not own, lease or drive a Taxicab;

2. Has no financial interest in any Taxicab Company operating within the State of Oregon;

3. Has received ASE (Automotive Service Excellence) A Series (Automobile/Light Truck Certification) master certification; and

4. Is not employed by any Taxicab Company.

B. City Recorder. The City of Woodburn City Recorder or designee.

C. Driver. Any person operating Taxicabs as a Driver for any Taxicab Company regardless of whether the vehicles so operated are owned by the company, leased, or owned by individual members of the company.

D. Finance Director. The City of Woodburn Finance Director or designee.

E. Flat Rate. A rate that remains constant regardless of the distance traveled or the time involved.

F. Operate. To drive a Taxicab, to use a Taxicab in the conduct of business, to receive money from the use of a Taxicab, or cause or allow another person to do the same.

G. Person. Any individual, partnership, trust, estate, corporation, or other form of business organization recognized by Oregon law.

H. Police Chief. The City of Woodburn Chief of Police or designee.

I. Taxicab. Any motor vehicle used for transportation for hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled, waiting time, or a flat fee except for an accessible vehicle, ambulance, limousine, medical transport vehicle, shuttle or tour bus. For purposes of this section, the following definitions shall apply:

a) "Accessible vehicle" means any motor vehicle constructed and equipped for the non-emergency transportation of persons in

b) wheelchairs, persons using other mobility aids, or with other mobility impairments.
c) "Ambulance" means any motor vehicle constructed and equipped for the emergency transportation of persons because of or in connection with their illness, injury or disability.
d) "Limousine" means any luxury class motor vehicle that is operated for hire on a reserved, hourly basis.
e) "Medical transport vehicle" means any motor vehicle constructed and equipped for the non-emergency transportation of persons in connection with their illness, injury or disability.
f) "Shuttle" means any motor vehicle for hire that transports passengers between predetermined destinations (e.g., motels and airports), at fixed rates, and on a fixed schedule.
g) "Tour bus" means a motor vehicle accepting individual passengers for a fare for sightseeing or guided tours, making occasional stops at certain points of interest and returning the passengers to the point of origin.

J. Taxicab Company. Any person that operates Taxicabs other than only as a Driver that either has its primary place of business within the city limits, or regularly conducts business within the City, regardless of whether the vehicles so operated are owned by the company, leased, or owned by individual members of the company.

K. Taxicab Company Permit. A permit issued under this Ordinance to operate a Taxicab Company.

L. Taxicab Driver Permit. A permit issued by the City that the Driver is authorized to operate a Taxicab under this Ordinance.

M. Translink Provider. A business or company that has been approved as a provider of transportation services by the federal government by meeting federal standards and receipt of a certificate evidencing such compliance.

N. Taximeter. A mechanical or electronic device which calculates and displays a fare based on an initial fee, distance traveled, waiting time, or any combination thereof.

Section 2. Taxicab Company Permit Required – Exemptions

A. No Person shall operate any Taxicab Company in the City of Woodburn without possessing, in addition to any license required by any other law, a valid Taxicab Company Permit issued pursuant to this Ordinance. A Taxicab Company Permit may not be sold, assigned, mortgaged or otherwise transferred.

B. Exemptions to Taxicab Company Permit Requirement.

1. Public Transportation provided and funded in whole or in part by public organizations shall be exempt from the permit requirements of this Ordinance.

2. Certified Translink Providers that show proof of such certification to the City.

Section 3. Taxicab Company Permit Applications – Issuance

A. Application Requirements. An applicant for a Taxicab Company Permit must submit to the Finance Director:

1. Proof of registration with the Secretary of State for any corporate, LLC or LLP entity;

2. Proof of registration with the Secretary of State for any assumed business name, along with a listing of the registrant of such;

3. The business name, business address and residence address and telephone numbers of the applicant;

4. A list of any misdemeanor or felony convictions of the owner(s) and officers of the Taxicab Company;

5. The name of the person who will be responsible for and who will oversee the day-to-day operations of the Taxicab Company;

6. The make, type, year of manufacture, VIN number, and seating capacity of each vehicle that will be operated as a Taxicab under the Taxicab Company Permit;

7. A description of the proposed color scheme, name, monogram or insignia that will be used on the Taxicabs;

8. A nonrefundable application fee in the amount of $120.

B. Insurance Certificate. No Taxicab Company Permit will be issued unless the Taxicab Company provides to the Finance Director a Certificate of Insurance indicating that the insurance requirements of Section 8 of this Ordinance have been satisfied.

C. Inspection Certificate. No Taxicab Company Permit will be issued unless the Taxicab Company provides to the Finance Director an Inspection Certificate from a Certified Mechanic as provided in Section 7 of this Ordinance.

D. Issuance of Permit. The Finance Director will issue a Taxicab Company Permit upon finding that the applicant has met the requirements of this Ordinance.

E. External display of permit. Each Taxicab operated by a Taxicab Company shall prominently display on the exterior of the Taxicab a sticker issued by the City indicating that the permit requirements of this Ordinance have been met.

Section 4. Annual Taxicab Company Permit Renewal. Taxicab Company Permits shall be renewed upon submission of an annual permit fee in the amount of $100.

Section 5. Equipment

Every Taxicab is to be equipped with the following:

A. Except for a Taxicab charging a flat rate, a Taximeter that meets the requirements of this Ordinance.

B. A Taxicab charging a flat rate must be equipped with a sign that states "Flat Rate" and specifies the rate.

C. A top light identifying it as a Taxicab.

D. The company name and telephone number where service can be requested displayed on the exterior of the Taxicab.

E. A cell phone or taxi radio dispatching calls for service.

F. A current copy of the Taxicab Company Permit with the approved vehicle's Vehicle Identification Number (VIN).

G. A notice providing information necessary to file a complaint under this Ordinance.

Section 6. Taximeter Requirements.

A. Every Taxicab, except for a Taxicab charging a Flat Rate, must be equipped with a Taximeter in accurate operating condition, with a lighted face that can easily be read at all times by the passenger.

B. Every Taximeter must be inspected by a certified taximeter installer and certified at installation, at change in rate, and within 1 year of the last inspection. A certificate of inspection must be issued by a qualified Taximeter repair service upon each inspection. A copy of the certificate of inspection must remain in the Taxicab.

C. Certificates of inspection must include:

1. The identifying number of the Taximeter;

2. The make, model and license number of the Taxicab in which the Taximeter is installed;

3. The name of the Taxicab Company;

4. The date of inspection;

5. A statement that the Taximeter has been inspected and approved and that its readings are accurate; and

6. The signature of the individual making the certification.

D. A Taxicab Company must keep on file copies of all certificates of inspection of Taximeters.

E. Taximeters must operate within the following limits of accuracy: Plus or minus 50 feet in 1 mile and 1 second in 1 minute of waiting time.

F. Certificates of inspection may be examined by the City at any time during normal business hours.

G. All Taximeters must be approved by the National Type Evaluation Program (NTEP) as evidenced by a "Certificate of Conformance" issued by an authorized inspector. All Taximeters must have an active NTEP Certificate of Conformance number.

Section 7. Inspection and Maintenance of Taxicabs

A. Prior to the issuance of a Taxicab Company Permit, and annually thereafter, each Taxicab shall be examined and inspected by either a Certified Mechanic and shall be found to be in safe operating condition.

B. Every Taxicab must have proof of its annual inspection in the vehicle.
Proof of the inspection shall be submitted to the Finance Director on an annual basis.

Section 8. Taxicab Insurance Requirements.

A. Coverages and Limits: All Taxicab Company Permit holders must obtain, comply with, and maintain the minimum levels of insurance coverage outlined below during the entire term that the Taxicab Company Permit is valid:

1. Commercial Business Insurance. Taxicab Company Permit holders must secure and maintain a Commercial General Liability policy reflecting limits of no less than $1,000,000 per Occurrence and $2,000,000 Aggregate for covered claims arising out of, but not limited to, Bodily Injury, Property Damage, Personal Injury, and Contractual Liability in the course of the policy holder's work under the Taxicab Company Permit.

2. Vehicle Insurance. All Taxicab Company Permit holders, regardless of whether the company holds title to a vehicle or not, must provide the City with a copy of a valid Commercial Auto Liability policy reflecting a Combined Single Limit of not less than $500,000 per occurrence for claims arising out of, but not limited to, bodily injury and property damage incurred in the course of the vehicle's use as a Taxicab. The Commercial Auto Liability policy must comply with the mandatory laws of the State of Oregon and/or other applicable governing bodies.

3. Worker's Compensation and Employers Liability Insurance. The Taxicab Company Permit holder must secure and maintain a Workers Compensation and Employers Liability policy where required by state law.

4. The Commercial General Liability and Commercial Auto Liability coverage must name the City and its officers, agents and employees as additional insureds as respects to claims, in the course of the policy holder's work as a Taxicab Company.

5. The insurance limits are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the permit's term.

6. The insurance policy must allow for written notice to the Finance Director 10 days before any policy is cancelled, will expire, or be reduced in coverage.(as amended by Ordinance 2535)

7. In addition to notice provision requirements under Section 8(A)(6), the Taxicab Company itself must also notify the Finance Director at least 10 days before any policy is modified, cancelled, set to expire, or be reduced in coverage. (as amended by Ordinance 2535)

Section 9. Taxicab Driver Permits Required – Application Process & Requirements.

A. Permit Required. No person may drive a Taxicab that regularly conducts

business in the City without a Taxicab Driver Permit issued under this Ordinance.

B. Application Documents Required. Applicants for a Taxicab Driver Permit must submit to the Finance Director the items listed below. The failure to submit any of the items listed will result in a denial of the permit:

1. A completed application on a form approved by the Finance Director;

2. A copy of the applicant's current driver's license;

3. A copy of the applicant's non-Oregon driving record for any year in which the applicant was not a resident of Oregon during the last 10 years, regardless of the jurisdiction; and

4. A copy of the applicant's criminal history; and

5. A set of the applicant's fingerprints; and

6. If necessary, any information that reasonably relates to the application or is a clarification of information provided to the Finance Director.

C. Photographs. Applicants will be photographed by the City upon submittal of the Taxicab Driver Permit application. The photograph then becomes a part of the applicant's submittal package.

D. Fees Required. Applicants must submit a nonrefundable application fee in the amount of $105.

E. Age, Criminal History, Driving History and Insurability Requirements. Applicants for a Taxicab Permit may not be issued a permit if any of the following conditions exist:

1. The applicant has been convicted of any felony in the 10 years preceding the submission of the application;

2. The applicant has been convicted of any misdemeanor involving assault, sex crimes, drugs, prostitution or weapons in the 10 years preceding the submission of The application;

3. The applicant has a felony conviction involving physical harm or attempted physical harm to a person, regardless of when the conviction occurred;

4. During the 5-year period preceding the submission of the application, the applicant has been convicted of:

a. Any traffic crime, including but not limited to: Driving under the Influence of Intoxicants, Reckless Driving, Attempt to Elude a Police Officer, or Failure to Perform the Duties of a Driver; or

b. Misdemeanor theft.

5. During the 5-year period preceding the submission of the initial application, the applicant had greater than 10 traffic infractions as defined in ORS 801.557; greater than five serious traffic violations as defined in ORS 801.477; greater than five motor vehicle accidents that are required to be reported to the Oregon Department of Motor Vehicles pursuant to ORS 811.720; or, greater than five of any combination of serious traffic violations or motor vehicle accidents as provided above;

6. During the 10-year period preceding the filing of the initial application, the applicant's driving privileges were suspended or revoked by any governing jurisdiction as a result of a driving-related incident;

7. The applicant has more than three traffic violations of any kind within the previous 12 months from the date of the application;

8. The applicant does not have at least 2 years' worth of continuous driving experience in a United States jurisdiction immediately prior to the date of the application's submission;

9. The applicant is less than 21 years old; or

10. The applicant is unable to obtain car insurance for any reason.

Section 10. Issuance of Taxicab Driver Permit; Term; Replacements.

A. After an application for a Taxicab Driver Permit is submitted, the Police Chief will provide to the Finance Director a written investigation based upon the requirements of this Ordinance.

B. Issuance and Fees. If an applicant submits the required documents and otherwise satisfies all conditions and requirements of this Ordinance, the Finance Director will issue a Taxicab Driver Permit.

C. Permit Requirements: A Taxicab Driver Permit must:

1. Contain the permit number, permit expiration date, the driver's name and the driver's photograph;

2. Be posted in a prominent place within the Taxicab; and

3. Be inside the vehicle and available for inspection by any customer, passenger, police officer or designated City employee.

D. Term. A Taxicab Driver Permit is valid for a period of 12 months from the date of issuance and must be renewed upon expiration.

E. Replacements. If a driver's permit is lost, damaged or stolen, the Finance Director will issue a replacement permit for a fee in the amount of $25.

Section 11. Taxicab Driver Permit Renewals; Consequences of Failure to Renew.

A. Taxicab Driver Permits must be renewed every 12 months from the date of issuance.

B. The following information and the renewal fee must be submitted to the Finance Director no less than 30 days prior to the renewal date:

1. Updated file information if any information in the original application has changed;

2. Payment of the renewal fee of $55.

C. A Taxicab Driver Permit will not be renewed if the driver fails to satisfy any condition that would have been grounds to deny the initial permit, including any criminal activity or driving crimes/violations.

D. If a driver fails to timely pay the permit renewal fee or timely provide the renewal information required by this Ordinance, the Taxicab Driver Permit expires and becomes void. A voided Taxicab Driver Permit requires the former permittee to file an initial permit application and pay all necessary fees required by this Ordinance to obtain a valid Taxicab Driver Permit.

Section 12. Operating Regulations of Taxicab Companies and Drivers

A. Taxicab Companies. A Taxicab Company shall not:

1. Allow any Taxicab to be driven that has not been inspected and properly permitted, or

2. Allow a person to operate a Taxicab that does not have a valid Taxicab Driver Permit issued pursuant to this Ordinance.

B. Drivers. A Driver shall not:

1. Transport a passenger to his destination by any other than the most direct route, unless requested to do so by the passenger;

2. Fail to give a correct receipt upon payment of the correct fare if requested to do so by the passenger;

3. Permit additional persons to occupy or ride in the Taxicab without consent of the original passenger;

4. Unreasonably refuse to transport to a requested destination any passenger who requests services and is able to demonstrate the ability and willingness to pay the fare;

5. Charge a fare higher than the posted rates, or try to defraud a passenger in any way by manipulating devices to cause a registration to be made of a greater distance or more time; or

6. Operate a Taxicab in violation of any Oregon law.

Section 13. Suspension or Revocation

A. Any Permit under this Ordinance may be suspended or revoked by the Finance Director if after a reasonable investigation one or more of the following conditions exist:

1. The Taxicab Company ceases to operate any Taxicab for a period of 15 consecutive days without obtaining permission for the cessation of such operation from the City.

2. The Taxicab Company and/or Driver fails to operate the Taxicab in accordance with the provisions of this Ordinance.

3. The Taxicab Company and/or Driver fails to pay any of the fees or payments required to be paid by the provisions of this Ordinance.

4. The suspension or revocation is necessary to protect the public health, safety, and welfare.

5. The revocation or suspension is otherwise authorized by Ordinances of the city.

B. Any suspension or revocation pursuant to this section shall be in writing, setting forth the reasons therefore and the right of appeal pursuant to this Ordinance.

C. Except as provided below, any suspension or revocation shall be effective 10 days after mailing a copy thereof by first class United States mail addressed to the Taxicab Company and/or Driver at the business or residence address shown on the Permit application or renewal.

D. Notwithstanding subsection (C) of this section, a suspension or revocation may be made effective immediately if the City finds reasonable grounds to believe that:

1. A person holding a Taxicab Driver's Permit is not covered by liability insurance as required by this Ordinance,

2. A vehicle being operated as a Taxicab is not covered by liability insurance required by this Ordinance, or

3. Continued operation by the Taxicab Company or Taxicab Driver would cause, or is likely to cause, imminent danger to the public health, safety, or welfare.

Section 14. Surrender of Certificate or Permit

Any Permit suspended or revoked by the City shall be surrendered to the Finance Director and the operation of any Taxicab covered by said permit shall cease.

Section 15. Rates

A. Except for a Taxicab charging a Flat Rate, the rates to be charged to passengers are to be based on the factors of mileage from the point of origin to the point of destination by the most direct route, the time involved, and the number of passengers. No Taxicab may charge any fees or rates other than those that are posted.

B. A clear and complete summary of a Taxicab Company's rate schedule shall be posted in a conspicuous place in the passenger compartment of every Taxicab. Every Taxicab Company shall provide the Finance Director with a copy this summary prior to posting them in the Taxicabs.

C. Except for a Taxicab charging a Flat Rate, a summary of the meter rate in a form approved by the Finance Director shall be placed in a manner to be visible from the outside of every Taxicab.

Section 16. Complaints

A. Every Taxicab shall have posted in a prominent place within the passenger compartment a notice entitled "Complaints" providing the information necessary to file a complaint with the City and/or the Taxicab Company under this Ordinance.

B. Every Taxicab Company shall maintain an Annual Log of all complaints it receives either in writing or by telephone. Each Annual Log shall be kept by the Taxicab Company for a period of five years and shall be available to the City upon request.

Section 17. Appeals and Writ of Review

A. Any Person aggrieved by a decision of the Finance Director under this Ordinance may appeal such action to the City Council by filing a written Notice of Appeal, accompanied by an appeal fee of $65 with the City Recorder within 10 days of the Finance Director's decision.

B. Within 10 days of receiving the Notice of Appeal, the City Recorder will:

1. Set a time for the appeal to be heard by the City Council;

2. Place the hearing of the appeal upon the Council agenda; and

3. Notify the aggrieved Person and the Finance Director of the time set no less than 10 days prior to that time.

C. The aggrieved Person may appear personally, via a company representative, and/or by counsel and present such facts and arguments as may tend to support the appeal.

D. The Finance Director will provide the City Council with a staff report outlining the decision and the reasons therefore.

E. The City Council will uphold the Finance Director's decision, reverse it, or modify it with any conditions that the City Council deems appropriate. The City Council's final decision shall be in written and supported by findings.

F. All final decisions by the City Council under this Ordinance shall be subject only to Writ of Review in the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 18. Violation – Penalty

A. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class 1 Civil Infraction and may be processed according to the procedures contained in the Woodburn Civil Infraction ordinance.

B. Each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

C. The remedies provided for in this Section are cumulative and not mutually exclusive.

Section 19. Severability. The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 20. Savings. The repeal of any ordinance by this Ordinance shall not preclude any action against any person who violated the ordinance prior to the effective date of this Ordinance.

Section 21. Effective Date. This Ordinance is effective on October 1, 2010.

Passed by the Council March 22, 2010 and approved by the Mayor March 24, 2010.

ORDINANCE NO. 1766

AN ORDINANCE RELATING TO THE CONSTRUCTION, OPERATION, REGULATION AND CONTROL OF CABLE COMMUNICATIONS SYSTEMS WITHIN THE CITY'S TERRITORIAL LIMITS.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

[The substance of this ordinance is not reproduced here because of its great length. The full text of the ordinance is on file for public reference in the office of the City Recorder.]

Passed by the Council September 21, 1981, and approved by the Mayor September 22, 1981.

ORDINANCE NO. 1925

AN ORDINANCE PROVIDING FOR THE REGULATION OF PUBLIC DANCES; REPEALING ORDINANCE NO. 1299; AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Public Dance Defined**. A "public dance" is any dance not held in a private home or residence which is open to the general public.

Section 2. **Exclusions**. Provisions of this ordinance shall not apply to dances conducted as follows:

(a) Dances on premises regularly licensed by the Oregon Liquor Control Commission when such licenses are in effect.

(b) Dances or dancing instruction conducted by private dancing schools conducted exclusively for the purpose of giving instructions in dancing.

(c) Dances sponsored by public schools or church organizations on their property.

(d) Dances conducted by nonprofit clubs or fraternal, charitable or religious organizations to which admission is limited to members and to guests of a member.

Section 3. **Necessity for License.** No public dance shall be held until a license is obtained under this ordinance.

Section 4. **Application for Issuance of License**.

(a) Application for a license to hold a public dance shall be made in writing to the City Recorder at least 14 days prior to the date of the proposed dance. An application for an annual public dance license shall be accompanied by a fee of $300.00, $250.00 of which shall be refunded in the event such license is denied. An application for a license for a single public dance shall be accompanied by a license application fee of $50.00, no part of which shall be refundable in the event such license is denied. An annual public dance license shall be effective for one year from the date of issue. However, individual application for each public dance to be held shall be required as provided above.

(b) The application shall be signed by the applicant and by not less than two residents of the City of Woodburn. The residents shall certify that the applicant is of good moral character and shall request that such a license be issued to the applicant.

(c) The application shall contain the names of persons employed by the applicant to be in charge of providing security and control of said public dance. There shall be a minimum of two (2) such persons employed by the applicant for each dance. The persons so employed shall be over the age of 21 years.

(d) The application shall contain all such information as may be relevant to the character and background of the applicant, his security personnel required by Subsection (c) above, and his associates and partners, if any.

(e) The City Recorder shall forward the application to the Police Chief for investigation and may withhold issuance of a dance license until the application has been investigated and approved by the Police Chief. Upon approval by the City Recorder and Police Chief, the City Recorder shall issue the dance license.

Section 5. **License Non-Transferable**. Public dance licenses issued pursuant to this ordinance shall not be transferable.

Section 6. **Hold Harmless Provision**. By applying for and accepting a public dance license the applicant shall be deemed to have agreed to indemnify and hold harmless the City of Woodburn, its officers, boards, commissions, agents, and employees against and from any and all claims, demands, causes of actions of any kind or nature whatsoever which arise as a result of the issuance of the public dance license.

Section 7. **License Denial, Cancellation and Revocation**.

(a) Approval of a dance license shall be denied if the required application is incomplete, false or fraudulent or if the applicant, his security personnel, or partners or associates have, in the previous two years, violated the terms of a public dance license or of this ordinance. Prior conviction of the applicant of a felony or misdemeanor involving moral turpitude may be grounds for denial of a license when considered in the light of an applicant's entire background. Denial of a dance license may be based upon previous disruptive behavior having occurred at a public dance promoted, sponsored or held by the applicant, within the previous two years. Disruptive behavior may also be grounds for revocation or suspension of a license by the City Administrator.

(b) The City Administrator may cancel or revoke any dance license after it has been issued, if it is learned that the same was procured by fraud or false representation of fact.

(c) The applicant may appeal to the City Council from the decision of the city administrator in refusing to issue a public dance license, or revoking or canceling a license previously issued.

(d) All appeals to the City Council shall be in writing and filed with the city recorder within three days from the date of notice of the city administrator's decision. All appeals shall be heard by the City Council at its next regular meeting.

(e) The decision of the City Administrator shall not be stayed during the pendency of the appeal to the City Council. The City Council shall review the denial, suspension or revocation appealed from, and the action of the City Council shall be final.

Section 8. **Use of Return Checks Prohibited**.

(a) No person shall give to any person leaving a dance hall a return check or other token whereby readmission to such dance hall can be obtained without the payment of a fee the same as on original admission.

(b) No person leaving a dance hall shall receive any such ticket or token or gain readmission without paying the same fee as upon original admission.

(c) The provisions of this section shall not affect in any way readmittance during or after a regularly scheduled intermission.

Section 9. **Closing Hours**. All public dances shall be discontinued and all dance halls shall be closed on or before 12:30 a.m.

Section 10. **Alcoholic Beverages Prohibited**.

(a) The use of alcoholic beverages is prohibited at a public dance except that a person granted a license under this ordinance may serve and dispense alcoholic beverages for use on the premises of the public dance if that person has a valid special events permit issued by the Oregon Liquor Control Commission.

(b) The necessity of obtaining a license under the ordinance in no way relieves a person from complying with the rules and regulations of the Oregon Liquor Control Commission and any other applicable law.

Section 11. **Authority to Terminate Dance**. The City Administrator or Chief of Police shall have the authority to terminate a public dance without notice for non-compliance with this ordinance or other applicable law.

Section 12. **Civil Infraction Assessment**. A violation of any provision of this ordinance constitutes a class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 12 as amended by Ordinance 2008 passed October 24, 1988.]

Section 13. **Severability**. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of the ordinance.

Section 14. **Repeal and Saving Clause**.

(a) Ordinance No. 1299 is hereby specifically repealed.

(b) Notwithstanding Subsection (a) of this section, Ordinance No. 1299 shall remain valid and in force for the purpose of authorizing the arrest, prosecution, conviction and punishment of a person who violated Ordinance No. 1299 prior to the effective date of this ordinance.

Section 15. [Emergency clause.]

Passed by the Council September 9, 1985, and approved by the Mayor September 11, 1985.

ORDINANCE NO. 2084

AN ORDINANCE PRESCRIBING THE METHODS AND PROCEDURE FOR REGULATING ALARM SYSTEMS IN THE CITY OF WOODBURN, PROVIDING FOR FEES, AND PENALTIES FOR VIOLATIONS THEREOF; AND REPEALING ORDINANCE NO. 1649.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Title**. This ordinance shall be known as "Alarm System Control Ordinance".

Section 2. **Purpose, Construction and Scope**.

(1) The occupants of numerous residential, commercial and industrial establishments within the corporate limits of the City of Woodburn have found it desirable to make provisions for the installation upon their premises, at their own cost and expense, of alarms systems for emergencies requiring police response.

(2) There is a growing number of private enterprises that have embarked upon the business of selling or leasing such alarm systems, entering into contract with such occupants for the installation, operation and maintenance of such alarm systems, and providing, either individually or in concert with other private business enterprises an alarm device or devices installed in various alarm monitoring centers. Likewise, there is a growing number of private enterprises that have embarked upon the business of selling such alarm systems where the installation is completed by the purchaser and/or the user.

(3) The proliferation of the number of private enterprises engaged in the distribution of alarm systems and the number of commercial and residential users of such systems has resulted in conditions that has led to an unnecessary drain on the personnel, time, space, facilities and finances of the City and its police services, and a deterioration of the quality of police service to the City's residents.

(4) The public interest, therefore, requires the enactment of rules, regulations, standards, and procedures to regulate and control the private alarm business within the corporate limits of the City of Woodburn for the following purposes:

(a) The Police Department may efficiently and economically coordinate their functions with the various alarm services to which the public within the City may subscribe;

(b) The quality of the alarms services rendered to the public may be improved and maintained at a high level;

(c) The excessive number of false alarms which require expenditure of police resources must be reduced so that those limited resources may be more efficiently utilized;

(d) Those private enterprises engaged in the alarm business and persons who utilize alarm systems should help support the administration of the alarm system and where alarm users are responsible for an excessive number of false alarms, they should pay additional charges, which relate to the additional responses by the police and motivate alarms users to reduce the number of false alarms;

(e) Those alarm users who are responsible for excessive false alarms, and who fail or refuse to remedy the cause of excessive false alarms demonstrate their indifference to limited police resources being devoted to unnecessary emergency responses, and such users should be treated by punitive measures. By the time an alarm user's system has generated three false alarms within a year, the police response by way of notices will have provided the user with ample warning of the consequences and therefore it is presumed the alarm user has failed to take adequate steps to remedy the problem(s) and maintain the alarm system.

(5) The purpose of this ordinance is to encourage alarm users and alarm businesses to assume increased responsibility for maintaining the mechanical reliability and the proper use of alarms systems to prevent unnecessary police emergency responses to false alarms and thereby protect the emergency response capability of the City from misuse.

(6) Except where otherwise expressly provided, this ordinance governs all alarm systems eliciting a police response, establishes fees and charges and provides for the enforcement of violations.

Section 3. <u>Definitions</u>.

For the purpose of this ordinance, the following definitions apply:

(1) Alarm Business. A person, firm, partnership, corporation, association or other legal entity, engaged in the profit-oriented selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing of any alarm system in or on any building, structure, facility or portion thereof.

(2) Alarm System. An assembly or equipment, mechanical or electrical, or both, designed and used to signal the occurrence of an illegal or unauthorized entry or attempted entry or other illegal activity on the premises of the alarm user, which requires or solicits urgent attention and to which the police are expected to respond.

(3) Alarm User. A person, firm, partnership, corporation, association or other legal entity in control of a building, structure, facility or portion thereof within the City of Woodburn wherein an alarm system is used.

(4) Automatic Dialing Device. A device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and to transmit by voice message or code signal an emergency message indicating a need for emergency response. An automatic dialing device is an alarm system.

(5) Excessive False Alarm. A false alarm which occurs following three previous false alarms within one year.

(6) False Alarm. Signal or activation by an alarm system which elicits a response by the Police Department when a situation requiring a response by the police does not in fact exist. False alarms do not include an alarm signal by an alarm system, which is caused by violent and extraordinary conditions of nature or other extraordinary circumstances not reasonably anticipated or subject to control by the alarm business operator or the alarm user.

(7) Governmental Political Unit. Any tax supported public agency.

(8) Interconnect. To connect an alarm system including an automatic dialing device to a telephone line either directly or through a mechanical device that utilizes a telephone for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.

(9) Municipal Court. The Woodburn Municipal Court.

(10) Monitoring Center. A facility used to receive emergency and general information from an alarm user and to direct an emergency response.

(11) Police Chief. The police chief of Woodburn, Oregon or his designee.

(12) Police Department. The Woodburn Police Department.

Section 4. **User Instructions.** Every alarm business, which operates as such on behalf of alarm users within the City shall furnish the user with instructions which enable the user to operate the alarm system properly without false alarms and to obtain service for the alarm system.

Section 5. **Automatic Dialing Device. Certain Interconnection Prohibited**.

(1) It is unlawful for any person to program an automatic dialing device to select a primary trunk line or any 911 trunk line, capable of signaling a need for police response; and it is unlawful for an alarms user to fail to disconnect or reprogram an automatic dialing device which is programmed to select a primary trunk line upon of receipt of notice from the Police Chief, directing that such disconnection or reprogramming occur.

(2) It is unlawful for any person to program an automatic dialing device which selects any telephone line assigned to the City of Woodburn; and it is unlawful for an alarm user to fail to disconnect or reprogram such a device upon of receipt of notice from the Police Chief that such automated dialing device should be disconnected or reprogrammed.

(3) The City of Woodburn and other governmental providers of emergency and critical municipal services, including but not limited to water, sewer, and streets are exempt from the provisions of this section.

Section 6. False Alarms, Hearing, Determination.

(1) An alarm user, whose alarm system has three or more false alarms within a year shall be subject to a charge for excessive false alarms in an amount of $15.00. Excessive false alarm charges shall be paid by the alarm user notwithstanding an agreement or claim of liability which holds an alarm business responsible for such charges. Excessive false alarm charges shall be established in an amount designed to encourage correction in an alarm system or in the operation of an alarm system, to discourage false alarms and to reimburse the City for the use of its police resources.

(2) After each of the first three false alarms during a year, the Police Chief shall send by regular mail a notice of false alarm to the alarm user and the alarm business. The notice shall advise the alarm user and the alarm business of the date and time of the false alarm and the specific number of false alarms recorded by the coordinator for the alarm system during the current year. The notice shall also advise that upon the occurrence of a fourth false alarm during the year, the alarm user will be charged a fee for each excessive false alarm.

(3) If the Police Department responds to a third false alarm during the year, the Police Chief shall forward a notice by certified mail return receipt requested to the alarm business stating that the Police Department has responded to three (3) false alarms at the address where the alarm system is located. This notice shall also advise that the occurrence of any additional false alarms at the address where the alarm system is located during the year will result in a fee to the user for excessive false alarms.

(4) The Police Chief shall prescribe the form of the notices to be used in this section. For purposes of determining which form of mailing and notice to use, any alleged false alarm, which is disputed as provided in this section and for which a final determination has not been made, shall be treated as having occurred. The Police Chief shall insure that adequate records of notices being sent to alarm users and alarm businesses are maintained by the Police Department. Failure of a person to receive a notice shall not invalidate any proceeding in connection with a false alarm or in the imposition of additional charges.

(5) An alarm user or alarm business who is aggrieved by the determination that a particular false alarm has occurred may request a hearing. The request shall be made in writing and filed with the Police Chief and the Municipal Court within ten (10) days of the date on which the alarm user is sent the notification of false alarm for which a hearing is requested. Unless a request for a hearing is made in accordance with this section, an alarm user shall have waived any right to challenge the decision whether a particular false alarm occurred and the false alarm shall thereafter be treated as having occurred on the date and time alleged. If a hearing is requested in accordance with this subsection, the Municipal Court shall notify by regular mail the person requesting the hearing of the time and place of the hearing.

(6) Every hearing to determine whether a false alarm has occurred shall be held before the Municipal Court without a jury. The court may in the interest of justice consolidate hearings which involve the same alarm user or alarm system and false alarms within the same year. The person requesting the hearing may be represented by counsel, but counsel shall not be provided at public expense. If counsel is to appear, written notice shall be provided to the Municipal Court and Police Chief not less that five (5) business days prior to the hearing date. The Police Chief, or the City's designated representative and the person requesting the hearing shall have the right to present written and oral evidence. Oral testimony shall be taken only on oath or affirmation and shall be subject to the right of cross-examination. If the person requesting a hearing wishes that witnesses be ordered to testify, they must request the court to order the desired witness subpoenaed, which request shall be at least five (5) business days prior to the scheduled hearing. A deposit for each witness shall accompany the request and such deposit shall be refunded, if it is determined the alleged false alarm did not occur. The deposit for subpoenas shall be in an amount equal to witness fees provided by statute in other courts of this State. At the hearing, any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. However, irrelevant and unduly repetitious evidence shall be excluded. The City shall have the burden of proving that a false alarm occurred by a preponderance of the evidence. Within thirty days after the hearing, the Municipal Court shall determine whether the alleged false alarm has occurred and shall so advise the parties. The decision of the Municipal Court is final.

Section 7. Confidentiality, Statistics.

(1) Except as otherwise required by law, if an alarm user requests that information submitted by the user as part of an application be kept in confidence, such information shall be held in confidence and shall be deemed a public record exempt from disclosure under Oregon law. The Police Department shall be responsible for maintenance of records created under this ordinance.

(2) Notwithstanding the requirements of subsection (1) the Police Department shall develop and maintain statistics for purposes of evaluating alarm systems.

Section 8. Allocation of Revenues. All fees and charges collected pursuant to this ordinance shall be deposited in the general fund in the City of Woodburn, and are nonrefundable.

Section 9. Duty to Maintain Alarm System.

(1) It shall be the duty of an alarm user to maintain its alarm system in good operating condition and free of false alarms.

(2) An alarm user whose alarm system generates four or more false alarms within a year violates this ordinance.

Section 10. Civil Infraction in Addition to Fee.

In addition to any fees assessed pursuant to this ordinance, a violation of the provisions of this ordinance constitutes a class 4 civil infraction, punishable in accordance with Ordinance 1988 of the City of Woodburn. Every date that a violation is found to exist constitutes a separate civil infraction.

Section 11. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance or of any resolution adopted hereunder is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions of this ordinance or any resolution adopted hereunder.

Section 12. Repeal. Ordinance No. 1649 is hereby repealed.

Passed by the Council May 26, 1992, approved by the Mayor May 27, 1992.

ORDINANCE NO. 2336

AN ORDINANCE ESTABLISHING A FILMING PERMIT PROCESS; SETTING FEES; PROVIDING FOR PENALTIES; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Permits for Filming Required.** All persons or legal entities shall obtain a filming permit prior to filming motion pictures, commercials or videotaped productions within the Woodburn City limits. This requirement shall not apply to films made by amateurs or to the filming of news events by accredited representatives of news agencies.

Section 2. **Issuance of Filming Permit.** Filming permits shall be issued by the City Administrator or the City Administrator's designee.

Section 3. **Application.** A written application for a filming permit shall be filed with the City Administrator or designee at least fourteen (14) days prior to filming, unless waived by the City Administrator. The application shall include:

1. The name and contact information of the person, firm, or corporation employing the person or persons who will perform the filming.

2. The name and contact information of a person who will be responsible for the filming crew on location in the City.

3. The specific date, location, time of arrival on the filming site and duration of filming (including site preparation, site restoration, and departure) for each scene to be filmed within the City limits.

4. The extent to which normal use of public property/right-of-way will or could be impaired or curtailed during filming.

5. The number and location of vehicle parking spaces that will be needed during filming and the anticipated hours of use of the spaces.

6. The number of police or other City personnel desired or needed for traffic and/or pedestrian control, security of equipment, or other purposes during filming.

7. Written authorization from the property owner if private property is to be used in conjunction with public property during filming.

8. The processing fee as set by this Ordinance.

Section 4. Review of the Application.

1. The City Administrator or designee shall review the application and may issue the permit if the City Administrator or designee finds that the filming permit will not:

a. Adversely impact the public health, safety or welfare;

b. Adversely impact the affected neighborhood(s) or business district(s);

c. Result in a cost to the public due to the use of public property or facilities, potential loss of public revenue, or provision of City personnel, unless the City is compensated for such costs by the applicant;

d. Substantially inconvenience residents or businesses; or

e. Substantially interfere with the public peace or the quiet enjoyment of private residential property.

2. The City Administrator or designee may impose conditions on a permit in order to alleviate or mitigate any potential adverse impacts described in subsection 1 of this section.

3. The City Administrator or designee may deny the application if he or she determines that the permit will result in any of the potential adverse impacts described in subsection 1 of this section which cannot be alleviated or mitigated by the imposition of conditions.

4. An approved filming permit shall:

a. Specify the location and time of use of any City property that will be affected by filming.

b. Set forth any conditions or restrictions imposed by the City Administrator or designee pursuant to subsection 2 of this section.

c. Require a deposit of funds prior to filming in an amount estimated by the City Administrator or designee to be sufficient to compensate the City for any public costs described in subsection (1)(c) of this section incurred as a result of the filming. In the event that filming is cancelled, the City shall refund the deposit minus an amount for any costs incurred by the City up to the date of cancellation.

d. Require the delivery of a certificate of insurance prior to filming in an amount determined by the City Administrator or designee to be sufficient to protect the City from any and all liability arising out of the filming activity. The certificate of insurance shall name the City of Woodburn as an additional insured.

Section 5. Appeals.

1. Any decision regarding an application or the conditions of a permit may be appealed by the applicant to the City Council by filing a written notice of intent to appeal with the City Recorder. The notice shall be filed within seventy-two (72) hours of receipt of the decision by the applicant and shall include a statement of the reasons for the appeal and an appeal fee. The filing of an appeal shall stay the permit until the appeal is decided by the Council.

2. In reviewing the appeal, the Council shall determine whether the decision complies with the criteria and requirements of Section 4 of this ordinance. The Council may affirm, reverse or modify the decision. The Council's decision shall be final.

Section 6. Compensation for Public Costs. The applicant shall compensate the City for any and all public costs described in Section 4.1. If the deposit required pursuant to Section 4.4c is insufficient to cover such costs, the applicant shall remit the balance to the City upon receipt of written notice of such additional costs.

Section 7. Permit Application Fee. An application for a filming permit shall be accompanied by a fee in the amount of $1,000.00.

Section 8. Appeal Fee. An appeal under Section 5 of this Ordinance shall be accompanied by an appeal fee in the amount of $300.00.

Section 9. Violations. A violation of any provision of this Ordinance or of any term or condition of an approved filming permit is a Class 1 civil infraction and shall be enforced pursuant to the Civil Infraction Ordinance.

Section 10. Severability Clause. If a portion of this Ordinance is for any reason held to be invalid, such decision shall not affect validity of the remaining portions of this Ordinance.

Section 11. [Emergency clause.]

Passed by the Council May 12, 2003, and approved by the Mayor May 14, 2003.

ORDINANCE NO. 2399

AN ORDINANCE PROVIDING FOR THE REGISTRATION OF BUSINESS WITHIN THE CITY OF WOODBURN; ESTABLISHING A REGISTRATION PROCESS; AND PROVIDING A PENALTY FOR VIOLATION THEREOF; AND SETTING AN EFFECTIVE DATE.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. The registration required and restrictions imposed by this ordinance are enacted primarily for the purpose of regulation of businesses. The public's interest is served by insuring that regulated businesses will be carried on in continuing compliance with applicable laws and ordinances and in a manner which does not detract from the public health, safety, or welfare. In addition, this ordinance is enacted to recoup the necessary expenses required to undertake the administration and enforcement of this ordinance and to provide revenue for law and code enforcement purposes. The payment of a registration fee required hereunder and the acceptance of such fee and issuance of a business registration certificate by the City shall not entitle the registrant to carry on any business not in compliance with all the requirements of City ordinances and all other applicable laws.

Section 2. Definitions. For the purpose of this ordinance, the following terms, phrases, and words are defined as follows:

A. "Business" means any vocation, occupation, profession, enterprise, establishment, or any activity, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit, or benefit, either directly or indirectly, on any premises in the City. This definition includes any transaction involving the rental of property, the manufacture or sale of goods, or the sale or rendering of services other than as an employee.

B. "The City" means the City of Woodburn, Oregon.

C. "City Council" means the City Council of the City of Woodburn, Oregon.

D. "City Administrator" means the City Administrator or any officer or employee designated by that person to perform duties described in this ordinance

E. "Garage Sale" means a commercial activity, open to the public, conducted at a private residence where personal property is sold or auctioned to others, provided the number of sale days at a particular residence does not exceed three (3) days per occurrence, and no more than two (2) occurrences per calendar year.

F. "Person" means and includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or corporations or any officers, agents, employees or any kind of personal representatives thereof, in any capacity, either on that person's own behalf or for any other person, under either personal appointment or pursuant to law.

G. "Home occupations" means businesses that conform to the definition of Home Occupations under chapter 2.203.12 in Woodburn Development Ordinance as determined by the City Administrator.

H. "Residential Rental Unit" means separate living quarters, which are rented, leased, or let in exchange for full or partial monetary compensation.

I. "Government Entities" means the federal government, the State of Oregon, a county, a special district, or a municipality.

Section 3. Registration Required.

A. No person shall engage in any business within the City or transact any business specified in this ordinance, without first obtaining a registration certificate and paying the fee prescribed. The provisions of this ordinance shall be in addition to any other fee or registration requirements imposed by the City of Woodburn, unless otherwise specified.

B. A person engaged in business in more than one location, or in more than one business registered under this ordinance at the same location, shall make a separate application for each business or location, provided however that the fee for second and subsequent businesses shall be twenty dollars ($20.00). Warehouses and distributing plants used in connection with and incidental to a business shall not be deemed a separate place of business. Separately franchised operations shall be deemed separate businesses even if operated under the same name.

C. A person representing himself/herself, or exhibiting any sign or advertisement that he/she is engaged in a business within the City shall be deemed to be actually engaged in such business and shall be liable for the payment of such registration fee and subject to the penalties for failure to comply with the requirements of this ordinance.

D. No person shall maintain or operate two or more residential rental units without first obtaining a business registration certificate and paying the prescribed fees.

Section 4. Exemptions. The following entities and types of activities are exempt from regulation under this ordinance. The person asserting an exemption under this ordinance shall have the burden of establishing eligibility for the exemption.

A. Nothing in this ordinance shall be construed to apply to any person transacting or carrying on any business within the City of Woodburn, which is exempt from taxation, by the City by virtue of the Constitution of the United States or the Constitution of the State of Oregon.

B. No person whose income is based solely on a wage or salary shall, for the purpose of this ordinance, be deemed a person transacting or carrying on any business in the City, and it is the intention that all registration taxes and fees will be borne by the employer.

C. Any business paying a franchise tax or transient occupancy tax under City ordinances is exempt from the requirements of this ordinance.

D. Persons whose sole business activity is making deliveries or taking orders from duly registered businesses within the City are exempt from this ordinance.

E. Activities conducted pursuant to a special events permit issued by the City are exempt from the requirements of this ordinance.

F. Producers of farm products raised in Oregon, produced by themselves or their immediate families, who sell, vend, or dispose of such products within the City is exempt from this ordinance. [Section 4F is repealed by Ordinance No. 2426 passed November 26, 2007.]

G. Nonprofit organizations, religious organizations, civic organizations and clubs wishing to canvass for funds or sell door-to-door to raise funds, or conduct fund-raising events to be used solely for the purpose for which the organization was created, and from which no third party receives a profit are exempt from the requirements of this ordinance.

H. A builder who is registered under ORS 701.055 and is employed as a subcontractor working for a contractor possessing a valid business registration issued by the City of Woodburn is exempt from this ordinance.

I. Garage sales as defined in this ordinance are exempt from the requirements of this ordinance.

J. Any person required to be licensed through any other City ordinance including, but not limited to activities such as, peddlers and solicitors," "public dances," or other licensed activities is exempt from this ordinance.

K. Government entities are exempt from the requirement of this ordinance.

Section 5. <u>City Administrator Authority</u>.

A. The City Administrator may adopt reasonable rules and regulations in order to carry out the provisions of and for enforcement of the provision of this ordinance. The Administrator shall prescribe forms for business registration application. The Administrator shall review or cause to be reviewed application for and renewals for business registrations, and shall submit such applications to appropriate City departments for investigation to determine and comment on the applicant's compliance with City ordinance and other rules.

B. The City Administrator shall have the authority to approve, approve with conditions, or deny any application for or renewal of a business registration. If the Administrator determines that the application should be denied or approved with conditions, the Administrator shall notify the applicant in writing of the decision. The notice shall state the reason for the decision and inform the applicant of the provisions for appeal. If the Administrator's decision is to approve without conditions, issuance of

the registration is notification of the decision and it does not need to state any reason or appeal rights.

Section 6. Application Requirements.

A. Application for business registration shall be made to the City at least 30 days prior to the date the registration is requested to be effective. The application forms shall provide for information necessary to determine the identity and address of the applicant and of the owner of the business to be registered and shall provide for other information as may be requested by the City Administrator. The application shall be signed by the applicant and shall constitute the applicant's consent for the City to conduct an investigation of the applicant's request including permission to enter property to be used in conducting the business. The applicant shall submit information necessary to evaluate the applicant's request and to determine compliance with applicable City of Woodburn ordinances. If the applicant fails to supply information so required or submits false or misleading information, the registration may be denied and if issued, may be revoked.

B. Applications shall be accompanied by any required fee. Application fees shall be non-refundable.

Section 7. Criteria for Approval or Denial.

A. Approval or denial of an application for initial issue or renewal shall be based on consideration of all available evidence indicating whether or not the applicant meets the requirements of City ordinances. In the event no grounds exist for denial of a certificate, a certificate shall be issued.

B. Any of the following may be grounds for denial of the certificate:

1. Any false of incomplete statement made or acknowledged on the application form; provided, however, that in the event such statement is the result of excusable neglect, the applicant may resubmit an application with appropriate corrections.

2. The business activity would not comply with City ordinances and could not be made to comply through the imposition of appropriate conditions.

3. A previous history of unlawful business activity by the applicant, which, if continued would be grounds for revocation of the certificate.

4. The business activity would endanger persons or property.

Section 8. Registrations and Renewals.

A. Business registration is valid for one year.

B. Business registrations shall be renewed by the payment of the annual fee on or before the anniversary date of the original issuance of the business registration.

C. The renewal application will indicate any change in use, ownership, or location of the business.

Section 9. Term, Transfers and Relocations.

A. Term: A business registration issued under this ordinance shall be valid for one year from the date of issuance.

B. Transfer: In the event of the transfer of ownership of any business, the applicable registration certificate may be transferred by application to the City Administrator. An application shall be accompanied by a transfer fee.

C. Relocation of Existing Business: In the event a business relocates, the business shall reapply to the City Administrator to transfer the business registration.

Section 10. Fee.

A. As of the effective date of this ordinance fees shall be:

1. All businesses, excepting home occupation businesses, shall pay an annual fee of fifty dollars ($50.00).

2. Home occupation businesses shall pay a reduced annual fee of twenty-five dollars ($25.00).

3. The transfer of ownership fee shall be twenty dollars ($20.00).

B. Future fees shall be set as part of the Master Fee ordinance.

Section 11. Use of Revenue. Revenue derived from Business Registration fees shall be used to recoup the cost of administering and enforcing the program. Any fees collected in excess of amounts necessary to recoup the costs of program administration and enforcement shall be dedicated to support the activities of the Police Department's Community Response Team. Elimination of that team or a permanent reduction of that team below FY 2005-06 staffing levels, by City Council policy choice, shall trigger a review of Sections 10 and 11 of this ordinance.

Section 12. Revocation of Registration. The City Administrator, upon determining that unlawful business activity is occurring or has occurred, or that a business would not qualify for a license pursuant to this ordinance, shall notify the licensee in writing that the license is to be revoked. The notice shall be sent at least thirty (30) days before the date of revocation. If the activity giving rise to the need for the revocation proceedings is discontinued, the City Administrator may terminate the proceedings. A notice of revocation shall state the reason for the revocation and inform the licensee of the provisions for appeal.

Section 13. Appeal.

A. A business whose registration has been denied renewal, or is to be revoked, may within thirty (30) days after the notice of denial, or revocation is mailed, appeal in writing to the City Council. The appeal 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 proposed determination of the appeal should be.

B. An appellant who fails to file such a statement within the time permitted waives his/her objections, and the appeal shall be dismissed. If a notice of revocation is appealed, the revocation does not take effect until final determination of the appeal. The City Council shall hear and determine the appeal on the basis of the written statement and such additional evidence as it considers appropriate.

C. At the hearing, the appellant may present testimony and oral argument, personally or by counsel, and any additional evidence. The rules of evidence as used by courts of law do not apply, and the decision of the City Council after the hearing is final.

Section 14. **Display Required**. All registration certificates issued in accordance with this ordinance shall be openly displayed in the place of business or kept on the person or on the vehicle of the person registered. Failure to display or carry such registration shall be deemed a violation of this ordinance.

Section 15. **Violation – Penalty**.

A. A violation of any provision of this ordinance constitutes a Class 2 civil infraction and shall be processed according to the procedures contained in the Woodburn Civil Infractions ordinance.

B. A finding that a person has committed a violation of this ordinance shall not act to relieve the person from payment of any unpaid business fee, including delinquent charges, for which the person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.

Section 16. **Delinquency Charge.** In addition to the business registration fee required by this ordinance, a delinquency charge in the amount of 50% of the applicable fee shall be assessed if the annual renewal fee is not paid within 15 days after the anniversary date of the original issuance of the business registration.

Section 17. **Severability**. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of this ordinance.

Section 18. **Effective Date**. This ordinance shall be in full force and effect on April 17, 2006.

Passed by the Council March 13, 2006, and approved by the Mayor March 15, 2006.

ORDINANCE NO. 2425

AN ORDINANCE REGULATING THE PLACEMENT AND PERMITTING OF NEWSRACKS AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. General Findings. The City Council of the City of Woodburn finds and declares that:

A. It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property. The City Council wishes to provide for the placement of newsracks, stands, containers and similar newspaper and publication vending machines to provide a forum for communication while preserving the convenience of those using the public rights of way. Newsracks placed and maintained on public property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

B. The public health, safety, welfare, and convenience require that: interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from, and the enjoyment of store window displays on, properties adjoining public property be protected.

C. The regulations on the time, place and manner of the placement, location and maintenance of newsracks set forth in this Ordinance are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of information to the public.

D. The City Council finds that newsracks have proliferated and increased in the City to the extent that they must be addressed by this Ordinance. Exhibit "A" describes examples of the proliferation of newsracks in the city.

Section 2. Special Findings for the Urban Renewal Core Area. The City Council of the City of Woodburn finds and declares that:

A. The City has made a substantial monetary and policy commitment to revitalize its Urban Renewal Core Area, that area described in Exhibit "B" of this Ordinance.

B. The City Council passed Ordinance 2298 on August 13, 2001, which adopted the Woodburn Urban Renewal Plan. The Woodburn Urban Renewal Plan is incorporated into these findings by this reference.

C. The purpose of the Woodburn Urban Renewal Plan is to rehabilitate and redevelop blighted areas consistent with the Woodburn Comprehensive Plan.

D. A key component of the Woodburn Urban Renewal Plan is to enhance livability by making improvements in the Urban Renewal Core Area. This area encompasses Woodburn's downtown. It is pedestrian and bicycle friendly. Under the Woodburn Urban Renewal Plan, planned improvements in this area include street, sidewalk, landscape and lighting improvements, street furnishings and public art, building renovations and façade improvements, creation of public spaces, business incubation and small businesses assistance.

E. On August 21, 2005, the Woodburn Downtown Plaza was dedicated as part of the first phase of the improvements made through the Woodburn Urban Renewal Plan. The Plaza is in the center of the Urban Renewal Core Area and contains a water fountain, lawn, 8 benches, and the future location of a gazebo. Pedestrians regularly walk through the Plaza and sit on the benches.

F. The Urban Renewal Core Area is also a historic area, containing the oldest existing structures in Woodburn. Much of the construction is of un-reinforced masonry dating from the late Nineteenth Century.

G. The City Council passed Ordinance 2313 on April 9, 2002, which adopted the Woodburn Development Ordinance. The Woodburn Development Ordinance is incorporated into these findings by this reference.

H. The Woodburn Development Ordinance was also intended to enhance livability in the Urban Renewal Core Area through special zoning regulations in the form of a Downtown Development and Conservation District. Under the Woodburn Development Ordinance, Architectural Design Guidelines apply to exterior alterations to existing buildings and require that "materials, colors, and textures used in the alteration or addition should be fully compatible with the traditional architectural character of the historic building."

I. The Urban Renewal Core Area also has a higher crime rate than other areas of Woodburn. Street crimes, gang activity, vandalism, and the application of graffiti are ongoing problems that the City continues to address in this area. Exhibit "C" describes the concentration of graffiti and other property crimes in this area as compared to the rest of the city.

Section 3. <u>Purpose</u>.

A. The general purpose of this Ordinance is to promote the public health, safety, and welfare through the regulation of placement, appearance, number, size, and servicing of newsracks on public rights of way so as to:

1. Provide for pedestrian and driving safety and convenience;

2. Prevent unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;

3. Provide reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs or signals, hydrants and mailboxes, and access to locations used for public transportation services;

4. Reduce visual blight on the public rights of way and protect the aesthetics of store window displays, public landscaping and other improvements;

5. Reduce exposure of the City to personal injury or property damage claims and litigation; and

6. Protect the right to distribute information that is protected by state and federal constitutions through the use of newsracks.

B. The purpose of the Additional Standards for newsracks in the Urban Renewal Core Area is to:

1. Require newsracks to be constructed of steel, a material more resistant to acts of vandalism (i.e., cutting and burning the newsrack) than lighter and weaker construction materials.

2. Require newsracks to be constructed of steel so that they are uniform in appearance and compatible with the architectural character of the historic buildings in this area.

3. Require that newsracks weigh at least 80 pounds. This weight requirement ensures that they are not easily vandalized, stolen or thrown into the public right-of-way. Newsracks made of lighter materials are not appropriate for installation in the Urban Renewal Core Area because the larger number of pedestrians and higher rate of crime in this area make it more likely that the newsracks could be thrown into the right-of-way and cause damage to persons and property.

4. Require newsracks to have coin mechanisms housed in the body of a newsrack or in armored heads welded or bolted to the body of a newsrack so that the newsracks are not subject to vandalism or theft.

5. Require newsracks to be painted or covered with a protective coating to make them graffiti resistant. This facilitates quick removal of graffiti so that criminal conduct and gang activity is discouraged.

Section 4. **Definitions.** For the purpose of this Ordinance, these words and phrases are defined as follows:

A. *Business day* means Monday through Friday, inclusive, of every week excepting holidays for which the city is closed to official business.

B. *City Administrator* means the Woodburn City Administrator or designee.

C. *Newsrack* means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display and sale or distribution without charge of newspapers, periodicals, magazines or other publications.

D. *Owner* means the person or its duly authorized representative who owns a newsrack placed in the City.

E. *Parkway* means the area between the public sidewalk and the curb of any public street and where there is no public sidewalk, the area between the property line/right of way line and the curb.

F. *Permit* means a permit issued pursuant to this Ordinance which allows for the placement of a newsrack within a specifically designated portion of a sidewalk or parkway.

G. *Person* means any individual, firm, company, corporation or other organization.

H. *Roadway* means that portion of a public street improved, designed or ordinarily used for vehicular travel.

I. *Sidewalk* means any surface dedicated to the use of pedestrians by license, easement, and operation of law or by grant to the city.

J. *Street* means all of that area dedicated to public use for public street and sidewalk purposes and includes, but is not limited to, roadways, parkways, alleys, service drives and sidewalks.

K. *Urban Renewal Core Area* is that area located close to downtown Woodburn and described specifically in Exhibit "A" to this Ordinance.

L. *Vision Clearance Area* is that area defined by Section 3.103.10 of the Woodburn Development Ordinance.

Section 5. Permit and Decal Required. It shall be unlawful for any person to place, maintain, or cause to be placed, or maintained a newsrack on, or projecting on, any public right-of-way without first receiving a permit from the City for the newsrack and affixing a decal evidencing such permit on the newsrack.

Section 6. Permit.

A. An application for a newsrack permit shall be made to the City Administrator on a form which shall include:

1. The name, street and mailing address, email address, and telephone number of the applicant, which shall be the duly authorized representative of the newsrack owner.

2. The name, street and mailing address, email address, and telephone number of both the publisher, if different from the applicant, and, the independent distributor(s), if any, authorized to service the owner's newsrack(s) for which the permit is sought.

3. The name, street and mailing address, email address, and telephone number of the applicant's designated representative, if different than applicant, whom the City shall give notice under this ordinance or contact at any time concerning the applicant(s) newsrack(s).

4. A description of each proposed newsrack, including its dimensions and signage, and whether it contains a coin-operated mechanism.

5. The name and frequency of the publication proposed to be contained in each newsrack.

B. A separate application shall be required for each publication.

C. If the application is properly completed and the type of newsrack and location proposed for each newsrack meets the standards set forth in this Ordinance, the City Administrator shall issue a permit within 5 business days from the date the applicant files the application. A single permit shall be issued for all newsracks applied for by an applicant that meet the standards of this Ordinance. A permit shall not be transferable.

D. A permit shall be valid for 1 year.

E. The permit application fee shall be $50.00, and the decal fee shall be $10.00 per newsrack. All fees imposed under this Ordinance shall be paid to the City Administrator at the time the application is filed and may be adjusted from time to time.

F. Each permittee shall be issued a pre-printed decal for each permitted newsrack, which shall be affixed to the lower right or left corner inside the window opening on the front of each newsrack.

Section 7. <u>Denial of Permit.</u> If the application is incomplete or the type of newsrack and location proposed for a newsrack does not meet the standards set forth in this Ordinance, the City Administrator shall deny the permit application. If the newsrack permit is denied, in whole or in part, the City Administrator shall, by certified mail, notify the applicant within 5 business days from the date of filing a completed application, explaining the reasons for the denial of the permit. The applicant shall have 10 business days from the date the certified letter is mailed to correct and resubmit the application or to appeal the decision, in writing, to the Woodburn Municipal Court.

Section 8. Appeal. The Woodburn Municipal Court shall conduct a hearing within 30 days of receipt of the applicant's written appeal request. Written notice of the time and place of the hearing shall be provided to the applicant at least 10 business days prior to the date of the hearing. The Woodburn Municipal Court shall render a written decision within 15 business days after the date of the hearing.

Section 9. General Placement and Location Standards for Newsracks.

A. A person may not install, use or maintain a newsrack on any public right-of-way if the newsrack:

1. Endangers public safety;

2. Interferes with public utility, public transportation, or other governmental use; or

3. Interferes with or impedes:

a. Pedestrian or vehicular traffic;

b. Entry or exit from a residence or business;

c. Access to a legally parked or stopped vehicle;

d. Use of a traffic sign or signal, emergency call box, transit shelter, bus stop, elevator, mailbox, or other public service; or

e. Access to use of a delivery area or loading zone.

B. A newsrack shall not be placed upon any portion of the public right-of-way that abuts the Vision Clearance Area.

C. Except as otherwise provided in this Ordinance, a newsrack requiring a permit under this Ordinance shall be placed or maintained on any public right-of-way in compliance with the following standards:

1. Every newsrack shall be placed so as to open toward the street.

2. If multiple newsracks are permitted at the same location, all such newsracks must be placed together in a straight line and abutting adjoining newsracks and no group of newsracks shall extend for a distance of more than 10 feet.

3. No newsrack shall be chained or otherwise attached to any parking meter, kiosk, trash receptacle, street light, utility pole or device, sign pole, stand pipe, transit shelter, bus bench, bus stop, or to any tree, shrub or other plant, or other structure.

4. No newsrack shall be placed, installed or maintained:

a. Within 5 feet of any fire hydrant, emergency call box, or other emergency facility.

b. Within 5 feet of any parking meter, bench, kiosk, trash receptacle, tree well, utility pole, signal pole, sign pole, stand pipe, or control cabinet.

c. Within 10 feet of any transit shelter, bus bench or designated bus stop. The distance requirement shall be measured from the roof of any transit shelter, the edge of any bus bench, or the pole sign for any designated bus stop.

d. Within 10 feet of any alley, loading zone, disabled ramp or curb cut.

e. At any location where the clear space for the passage of pedestrians after placement or installation is less than 4 feet, or as required by ADA Accessibility Guidelines, whichever is greater.

f. Within 3 feet of or on any area of flowers or shrubs or similar landscaping, or in such a manner where ordinary use of the newsrack will cause damage to such landscaping.

g. Within 3 feet of any commercial window display.

h. Within 3 feet of or in such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

i. In such a manner as to be permanently affixed to any sidewalk, street or other property of the City.

j. Within 20 feet of any crosswalk.

D. Subject to the other provisions of this section, a newsrack requiring a permit under this Ordinance may be placed on the parkway adjacent to a sidewalk when placement of the newsrack on the sidewalk would reduce clear passage for pedestrians as provided in this Ordinance. In this case, the newsrack should open toward the sidewalk.

E. In the event the City must expand or otherwise reconfigure public right-of-way or make improvements thereto to improve the adjacent street, sidewalk, or for other public purpose, any and all newsracks displaced by such improvements shall be removed by the permittee at the permittee's sole cost and expense and in accordance with the instructions of the City. Wherever possible, and only in accordance with the requirements of this ordinance, the City shall attempt to allow the relocation of any newsracks displaced as provided herein to the newly reconfigured right-of-way without additional permit fee; provided, however, where such right-of-way will no longer accommodate newsracks in accordance with the requirements of this ordinance, the City shall not be obligated to provide alternative or other sites for such displaced newsracks.

Section 10. General Construction and Maintenance Standards for Newsracks. Any newsrack requiring a permit under this Ordinance shall:

A. Be in a clean condition and in good repair.

B. Be constructed, installed, and maintained in a safe and secure condition.

C. Be made of solid material on all sides; no wire or other open form of newsrack will be permitted.

D. Be maintained so that it is free of graffiti.

E. Be affixed with a decal, issued by the City, evidencing the issuance of a permit under this Ordinance.

F. Be affixed with identifying information, which shall contain the name, address and telephone number of the newsrack owner and of the distributor of the publication contained therein. Such information shall be placed in a visible location on the front of the newsrack, and shall be legible.

Section 11. Additional Construction and Maintenance Standards for Newsracks in Urban Renewal Core Area. In addition to complying with the standards contained in Sections 9 and 10 of this Ordinance, any newsrack requiring a permit under this Ordinance that is located in the Urban Renewal Core Area shall meet the following additional standards:

A. A newsrack shall be manufactured from 20-gauge or thicker zinc coated steel.

B. A newsrack shall have a net weight of at least 80 pounds when not filled with newspapers, periodicals, magazines or other publications.

C. Coin mechanisms, if any, shall be housed in the body of a newsrack or in armored heads welded or bolted to the body of a newsrack.

D. A newsrack shall be painted or covered with a protective coating to make it graffiti resistant and promote the easy removal of any graffiti.

Section 12. Abandoned Newsracks. In the event any newsrack is severely damaged, or remains empty for more than 30 days, the newsrack shall be deemed abandoned, and may be seized and removed in the manner provided by this Ordinance.

Section 13. Seizure of Newsracks.

A. The City may seize and remove a newsrack if the person responsible for the newsrack has failed to obtain a permit under this Ordinance or where the newsrack creates an immediate danger to the public health, safety or welfare. The City Administrator shall provide notice to the owner, if known, by mailing a "Notice of Removal" to the last known address of the person.

B. Except for the instances specified in subsection "A" of this section, before any newsrack is seized, the designated representative shall be notified and provided 5 business days from notification in which to remedy the violation or to request a hearing to contest the seizure. A person notified under this subsection may make a written request for a hearing before the Woodburn Municipal Court.

C. If no hearing is requested after notice is given, the Woodburn Municipal Court may order the newsrack seized and disposed of. If a request for hearing is received, the Woodburn Municipal Court shall conduct a hearing within 30 days of receipt of the applicant's written request. Written notice of the time and place of the hearing shall be provided to the applicant.

D. The Woodburn Municipal Court shall render a written decision within 15 days after the date of the hearing.

E. The City shall hold any newsrack(s) seized under this section for 30 days from the date of seizure. The owner or designated representative may retrieve any seized newsrack(s) subject to a $25 seizure and impound fee for each newsrack retrieved, to be paid at the time of retrieval. If a hearing has been requested, the City shall hold any seized newsrack(s) until the conclusion of all proceedings involving the newsrack(s), but not less than 30 days. At the conclusion of the appropriate time under this subsection, the City shall become owner of the seized newsrack(s) and may dispose of them as appropriate.

F. The owner of any newsrack(s) retrieved after seizure under this section, shall re-apply for a newsrack permit, pursuant to the requirements of this ordinance, prior to placing the formerly seized newsrack(s) back in the city.

Section 14. Enforcement.

A. A newsrack placed in violation of this Ordinance constitutes a public nuisance, and may be abated.

B. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the City to enforce the provisions of this Ordinance.

C. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class 1 Civil Infraction and may be processed according to the procedures contained in the Woodburn Civil Infraction ordinance.

D. Each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

E. The remedies provided for in this Section are cumulative and not mutually exclusive.

Section 15. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 16. [Emergency clause.]

Passed by the Council October 8, 2007, and approved by the Mayor October 10, 2007.

ORDINANCE NO. 2468

AN ORDINANCE IMPLEMENTING CERTAIN LOCAL INCENTIVES FOR BUSINESSES LOCATED WITHIN THE WOODBURN ENTERPRISE ZONE

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. All businesses located within the Woodburn Enterprise Zone that obtain authorization from the State of Oregon pursuant to ORS 285C.140 shall be subject to the Expedited Land Use Review process under Ordinance 2460, the Woodburn Development Ordinance.

Section 2. The Enterprise Zone filing fee referenced in ORS 285C.140(1)(c) is waived for businesses within the Woodburn Enterprise Zone that obtain authorization from the State of Oregon pursuant to 285C.140.

Section 3. All businesses within the Woodburn Enterprise Zone that obtain authorization from the State of Oregon pursuant to ORS 285C.140 shall also be entitled to the following:

A. Waiver of 100% of the following planning fees adopted by Ordinance 2433 as part of the Master Fee Schedule;
    1. Sign Permit Fees
    2. Pre-Application Fees
    3. Expedited Land Use Review Fees

Section 4. All businesses within the Woodburn Enterprise Zone that obtain authorization from the State of Oregon pursuant to ORS 285C.140 shall have 100% of their business registration fees under Ordinance 2399 waived during the period of their authorization.

Section 5. All businesses within the Woodburn Enterprise Zone that obtain authorization from the State of Oregon pursuant to ORS 285C.140 shall have the water installation charges and sewer tap fees adopted by Ordinance 2433 as part of the Master Fee Schedule waived up to a maximum amount of $2,000.

Section 6. In addition to the foregoing incentives, all businesses within the Woodburn Enterprise Zone that obtain extended authorization from the State of Oregon pursuant to ORS 285C.160 shall have 100% of their planning fees adopted by Ordinance 2433 as part of the Master Fee Schedule waived.

Section 7. Nothing in this Ordinance waives or is intended to waive any Systems Development Charges that are due to the City pursuant to Ordinances 2070, 2111, 2250, 2438 or any other applicable City Ordinance.

Section 8. Enterprise Zone data will be reported to the City Council on an annual basis and will include information on new investments, tax exemptions granted, job creation, and public benefit criteria.

Passed by the Council July 26, 2010, and approved by the Mayor July 28, 2010.

ORDINANCE NO. 2527

AN ORDINANCE ADOPTING A MEDICAL MARIJUANA PERMIT PROCESS; IMPOSING REGULATIONS ON THE OPERATION OF MEDICAL MARIJUANA FACILITIES; AND DECLARING AN EMERGENCY

[Whereas Clauses]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to minimize any adverse public safety and public health impacts that may result from allowing Medical Marijuana Facilities in the City by adopting particular time, place and manner regulations as authorized under state statute and establishing a permitting process.

Section 2. Definitions.

A. "Cash Accounting" means a cash basis system of accounting in which the Operator of an enterprise records revenue and expenses when they are paid, regardless of when goods are received or delivered.

B. "City Administrator" means the City Administrator of the City of Woodburn or his/her designee.

C. "Company Principal" means a Person who is an officer or director of a legal entity or has a controlling interest in the entity, through ownership or control of 10% or more of the stock in the entity or 10% or more of the total membership interest in the entity or 10% or more of the total investment interest in the entity.

D. "Controlled Substances" means substances designated as Schedule I or Schedule II controlled substances in the Code of Federal Regulations Title 21, Chapter II, Part 1308.

E. "Convicted" means found guilty by verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

F. "Debt Financing" means secured or unsecured loans to provide funds for use in the Medical Marijuana Facility business, except for monies owed for the reasonable cost of goods or services received.

G. "Facility or Facilities" means a Medical Marijuana Facility or Medical Marijuana Facilities.

H. "Financial Interest" exists when a Person, the Person's immediate family, or a legal entity to which the Person is a Company Principal (1) receives or is entitled to receive directly or indirectly any of the profits of the Facility; (2) rents or leases real property to the Operator for use by the business; (3) rents or leases personal property to the Operator for a commercially unreasonable rate; or (4) lends or gives money, real property, or personal property to the Operator for use in the business.

I. "Marijuana" means all parts of the plant of the Cannabis Moraceae, whether growing or not, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes or as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or predation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

J. "Medical Marijuana" means all parts of marijuana plants that may be used to treat or alleviate a Medical Marijuana Qualifying Patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

K. "Medical Marijuana Facility or Facilities" means a Medical Marijuana Facility that is registered by the Oregon Health Authority under ORS 475.300-475.346 and that sells, distributes, transmits, gives, dispenses or otherwise provides Medical Marijuana to qualifying patients.

L. "Medical Marijuana Qualifying Patient" means a registry identification cardholder (Person who has been diagnosed by a physician as having a debilitating medical condition) as further defined by ORS 475.302(3) or the designated primary caregiver of the cardholder as defined by ORS 475.302(5).

M. "Minor" means any Person under 18 years of age.

N. "Operator" means the Person who is the proprietor of a Facility, whether in the capacity of Company Principal, owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. If the Operator is a corporation, the term Operator also includes

each and every member of the corporation's Board of Directors whose directorship occurs in a period during which the Facility is in operation. If the Operator is a partnership or limited liability company, the term Operator also includes each and every member thereof whose membership occurs in a period during which the Facility is in operation.

O. "Person" means natural Person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

P. "Premises" means a location registered by the State of Oregon as a Medical Marijuana Facility and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, restrooms, storerooms, and including all public and private areas where individuals are permitted to be present.

Q. "Public Property" means all City of Woodburn parks, and any real property with a Public Zone designation under the Woodburn Development Ordinance.

Section 3. Annual Permit Required. The Operator of any Medical Marijuana Facility in the City must possess a valid annual Medical Marijuana Facility permit issued under this Ordinance and must comply with the requirements of any and all state or local laws.

Section 4. Initial Permit Application Requirements.

A. Application forms for Medical Marijuana Facility permits will be available at the Woodburn Finance Department. Applications for initial and renewal Medical Marijuana Facility permits must be submitted to the Finance Department and must be signed under penalty of perjury. A separate permit application must be submitted for each proposed Facility location. The application documents must include at least the following:

1. The location of the proposed Facility.

2. The true names and addresses of the Persons or legal entities that have an ownership interest in the Facility; that have loaned or given money or real or personal property to the applicant for

use by the Facility within the preceding year; or that have leased real property to the applicant for use by the Facility.

3. A detailed description of the type, nature and extent of the enterprise to be conducted.

4. A detailed description of the proposed accounting and inventory systems for the Facility.

5. Certification that the proposed Facility is registered as an Oregon Medical Marijuana Facility pursuant to ORS 475.300-475.346.

6. Certification that the proposed Facility has met all applicable requirements of the Woodburn Development Ordinance.

7. Certification that all current fees and taxes owed have been paid.

8. Detailed illustrations (to scale) of all proposed signage and location of such signage.

9. Such other information deemed necessary by the City Administrator to conduct any investigation or background check (including the names and fingerprints) of the Operator(s), employees, volunteers, Persons with a Financial Interest, and Persons or entities providing Debt Financing for the Facility.

Section 5. Expiration and Renewal of Permits/Facility Permit Fees.

A. At the time of submission of an initial Facility permit application, the applicant must pay a Medical Marijuana Facility permit application and investigation fee as provided by this Ordinance. No portion of the Medical Marijuana Facility permit fee is refundable in the event operation of the Facility is discontinued for any reason.

B. A Facility permit terminates automatically on June 30 of each year, unless a permit renewal application is approved.

C. A Facility permit terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the Facility under this Ordinance and the City shall not be liable to the permit holder for termination of the permit in this manner.

D. A permit renewal application shall include information similar in nature to that provided on the permittee's initial permit application and must be submitted to the Finance Department no less than thirty (30) days prior to expiration of the permit. The permittee must pay a Medical Marijuana Facility permit renewal application and investigation fee at the time a permit renewal application is submitted.

E. A non-refundable application/investigation fee of $500 and a refundable $1,500 registration fee shall be charged for a Medical Marijuana Facility permit application or an annual Medical Marijuana Facility permit renewal application. The registration fee shall be refunded to the applicant if an application is returned to the applicant as incomplete, if the City denies an application, or if an applicant withdraws an application. The registration fee will not be refunded to the applicant if the City suspends or revokes a permit for noncompliance with any City Ordinance or regulations, or violations of any state laws.

F. In addition to the application/investigation fee and the registration fee, an appeal fee of $750 shall be charged for all appeals under this Ordinance.

Section 6. Permit Conditions. Any Medical Marijuana Facility must comply with the following requirements, in addition to any other state or local requirements:

A. The Facility must continue to be registered in good standing as an Oregon Medical Marijuana Facility pursuant to state law.

B. The Facility must provide written notification to the City Administrator of any sanctions imposed by the Oregon Health Authority on the Operator and/or restrictions imposed by the Oregon Health Authority on the operation of the Facility. The required written notification shall be provided to the City Administrator within ten (10) calendar days after the Oregon Health Authority has imposed the sanction or restriction.

C. The Facility must meet applicable laws and regulations, including, but not limited to zoning compliance, building and fire codes, including the payment of all fines, fees, and taxes owing to the City.

D. The Facility must not manufacture or produce any extracts, oils, resins or similar derivatives of Marijuana on-site and must not use open flames or gases in the preparation of any products.

E. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the Premises of the Facility.

F. Operating hours for retail sales to Medical Marijuana Qualifying Patients must be no earlier than 10:00 a.m. or later than 8:00 p.m. on the same day.

G. The Facility must utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the Facility to the Premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable Person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

H. The Operator of the Facility must certify that adequate measures have been taken to protect the public from the Fungus Aspergillus and specify what measures have been taken.

I. The Facility must provide for secure disposal of Marijuana remnants or by-products; such remnants or by-products shall not be placed within the Facility's exterior refuse containers.

J. The Facility's location shall conform to all requirements of the Woodburn Development Ordinance.

K. The Facility must not be co-located on the same tax lot or within the same building with any Marijuana social club, smoking club, or grow site.

L. Signage shall not include logos or illustrations, and shall emphasize identification of the Premises without drawing undue attention.

M. No Minor is allowed on the Premises unless the Minor is a Medical Marijuana Qualifying Patient and is accompanied by a

parent, guardian, or caregiver whose purpose is to procure the Minor's Medical Marijuana.

N. A Person with any felony convictions or a conviction for any drug related misdemeanor (including, but not limited to those under ORS 475) may not (1) be an Operator, Company Principal, employee, or volunteer of a Facility; or (2) have a Financial Interest in the Facility.

O. The Facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the City Administrator finds the books and records of the Operator are deficient in any way or if the Operator's accounting system is not auditable, the Operator must modify the Facility's accounting system to meet the requirements of the City Administrator.

P. The Facility must have a "cash drop safe" on site that is sufficient to secure all cash received.

Q. Each Operator must keep and preserve for a period of at least three (3) years records containing at least the following information:

1. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;

2. State and federal income tax returns;

3. Names of and any aliases of the Operator;

4. Names of and any aliases of employees/volunteers of the Facility;

5. Names of and any aliases of Persons with a Financial Interest in the Facility; and

6. The City Administrator may require additional information as he or she deems necessary.

R. Each Facility must display its current permit inside the Facility in a prominent place easily visible to Persons conducting business in the Facility.

S. Persons conducting business in the Facility must display their Oregon Medical Marijuana Program card to gain entry to the Facility.

T. Sales or any other transfers of Marijuana products must occur completely inside the Facility building and must be conducted only between the Facility and Medical Marijuana Qualifying Patients. No walk-up or drive-through service is allowed.

Section 7. Background Checks. The Finance Department will send to the Police Department the information provided on each initial or renewal Facility permit application. The Police Department will conduct criminal background checks under ORS 181.534 to determine whether any Person therein (including, but not limited to, an Operator, Person with Financial Interest, Company Principal, employee or volunteer) has any felony convictions or convictions for drug related misdemeanors and inform the Finance Department whether or not all the Persons named in the permit application passed the required background checks. If, following an initial application or renewal, an additional person is proposed to be an Operator, Person with Financial Interest, Company Principal, employee or volunteer, then such person must pass the background check prior to assuming such position.

Section 8. Examination of Books, Records and Premises.

A. To determine compliance with the requirements of this Ordinance, the Woodburn Development Ordinance, and any and all applicable regulations, the City Administrator may examine or cause to be examined by an agent or representative designated by the City Administrator, at any reasonable time, the Premises of the Facility, including wastewater from the Facility, and any and all Facility financial, operational and Facility information, including books, papers, payroll reports and state and federal income tax returns. Every permittee is directed and required to furnish to the City Administrator the means, Facilities and opportunity for making such examinations and investigations.

B. As part of investigation of a crime or violation of this Ordinance which law enforcement officials reasonably suspect has taken place on the Premises, the Police Department shall be allowed to view surveillance videotapes or digital recordings at any reasonable time.

C. Without reducing or waiving any provisions of this Ordinance, the Police Department shall have the same access to the Facility, its records and its operations, as allowed to state inspectors. Denial or interference with access shall be grounds for revocation or suspension of a Facility permit.

Section 9. Administrative and Other Remedies for Noncompliance, Administrative Appeals and Penalties.

A. The City Administrator may deny, suspend, or revoke a Facility permit for failure to comply with this Ordinance or rules adopted under this Ordinance, for submitting falsified information to the City or the Oregon Health Authority, or for noncompliance with any other City ordinances or regulations, or violation of any state laws.

1. Any suspension or revocation pursuant to this section shall be in writing, setting forth the reasons therefor, and written notice shall be given to the permittee by first-class United States Mail at least ten (10) calendar days prior to effective date of the revocation or suspension.

2. A decision to deny, suspend, or revoke a Facility permit may be appealed by filing a Notice of Appeal accompanied by the appeal fee of $750 in writing physically delivered to the City Administrator on or before the effective date. Unless City Administrator has declared imminent danger to the public will exist, the City Administrator's decision to revoke or suspend is stayed pending appeal. The matter shall be heard by a Hearings Officer appointed by the City Council who shall determine, by preponderance of the evidence, whether the City Administrator's decision should be upheld or reversed, or upheld in part and reversed in part. The hearing shall be conducted no later than sixty (60) days from the date of appeal, unless a different date is stipulated by the City and the applicant, or good cause is shown for setting the matter forward. Testimony at the hearing shall be taken upon oath or affirmation of the witnesses. The Hearings Officer shall consider only the matters set forth in the Notice of Appeal. The Findings and Decision of the Hearings Officer shall be served upon the appellant by first class mail within ten (10) days after the hearing concludes. The Hearings Officer decision shall be effective ten (10) days following the date of the decision. The Findings and Decision of the Hearings Officer shall be final and conclusive, subject only to writ of review under ORS 34.010 to 34.100, which shall be the sole remedy.

B. In addition to the remedies of suspension and revocation, failure to comply with the requirements of this Ordinance constitutes a class 1 civil infraction under the Civil Infraction Ordinance. Each day in violation constitutes a separate offense. Company Principals, Operators, employees, and volunteers are jointly and severably liable for such offenses.

C. The remedies provided herein are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Ordinance prohibit or restrict the City or other prosecutor from pursuing criminal charges under state law or City ordinance. Such remedies include, but are not limited to, any equitable remedies such as temporary restraining orders or other injunctive relief.

Section 10. Confidentiality. Except as otherwise required by law, and provided by this Ordinance, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the City under the terms of this Ordinance. Nothing in this section shall prohibit:

A. The disclosure of the names and addresses of any Operator or provider of equity or Debt Financing for a Facility; or

B. The disclosure of general statistics in a form which would prevent identification of financial information regarding a Facility Operator; or

C. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City under this Ordinance; or

D. The disclosure of information when such disclosure is required by public records law procedures.

Section 11. Severability. If any section, subsection, paragraph, sentence or word in this Ordinance is deemed to be invalid or beyond the authority of the City, either on its face or is applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Ordinance, and the application thereof; and to that end sections, subsections, paragraphs, sentences and words of this Ordinance shall be deemed severable.

Section 12. Emergency Clause.

Passed by the Council February 23, 2015, and approved by the Mayor February 25, 2015.

ORDINANCE NO. 583

A BILL FOR AN ORDINANCE PROVIDING FOR THE NUMBERING OF HOUSES, STORES, AND OTHER BUILDINGS ERECTED WITHIN THE CITY OF WOODBURN; COMPELLING THE OWNERS THEREOF TO NUMBER SUCH BUILDINGS; AND PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. Buildings, How Numbered. There shall be a uniform system of numbering all houses, stores and other buildings, except sheds and outbuildings erected or to be hereafter erected within the city limits of the city of Woodburn, by placing on the door or door frame of the main entrance of said building, or as near thereto as practicable, the number assigned thereto as hereinafter provided; said number to be painted on the building or on metal or glass, or a metallic figure used, at the option of the owner, and so placed as to be readily seen from the street. The figures designating the numbers when painted or otherwise shall be not less than three inches in height.

Section 2. Time for Numbering. All houses or buildings now erected shall be numbered within 90 days from the passage and approval of this ordinance, and all houses or buildings hereafter erected shall be numbered before being occupied.

Section 3. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 4 civil infraction and shall be dealt with according to the procedures. established by Ordinance 1998. [Section 3 as amended by Ordinance 2008 passed October 24, 1988.]

Section 4. Public Buildings. The committee on streets is hereby authorized to cause proper numbers to be placed on public buildings as required.

Section 5. Houses, How Numbered. That houses or buildings erected upon streets running northerly and southerly shall be numbered as follows: that part of each of said streets lying south of Cleveland Street shall be numbered southerly from the south side of said Cleveland Street, beginning with the number 100, and allow 100 numbers to each block; both sides of a street being considered a block. The even numbers to be used for numbering houses and buildings on the east side of said streets, and the odd numbers to be used for numbering on the west side of said streets. The first tier of blocks south of Cleveland Street shall be numbered southerly beginning such numbering with the figure 100, and continuing with successive numbers thereafter to and inclusive of the figure 199. The second tier of blocks shall be numbered beginning with the number 200 and continuing with the successive numbers thereafter, to and inclusive of the number 299, and continuing in like manner the numbering of each successive tier of blocks, giving 100 numbers to each tier of blocks, and ending such numbering at the southern boundary of the city. That part of said streets north of Cleveland Street shall be numbered in the same manner, but northerly from Cleveland

Street, beginning with the number 100 and giving 100 numbers to each tier of blocks northerly, and numbering in the same manner as numbering of said buildings southerly of Cleveland Street. Buildings or houses erected on lots which abut upon streets running easterly and westerly shall be numbered as follows: that part of each of said streets lying east of Front Street shall be numbered easterly from the east side of said Front Street, beginning with the number 100 and allowing 100 numbers to each block, both sides of the street being considered a block. The even numbers to be used for numbering houses and buildings on the south side of said streets, and the odd numbers to be used for such numbering on the north sides of said streets. The first tier of blocks east of Front Street shall be numbered easterly, beginning such numbering with the figure 100 and continuing with successive numbers thereafter to and inclusive of the figure 199. The second tier of blocks shall be numbered beginning with the number 200 and continuing with successive numbers thereafter to and inclusive of the number 299, and continuing in a like manner the numbering of each successive tier of blocks, giving 100 numbers to each tier of blocks, and ending such numbering at the eastern boundary of the city. That part of said streets lying west of Front Street shall be numbered in the same manner, but westerly from Front Street, beginning with the number 100 and giving 100 numbers to each tier of blocks westerly, numbering in the same manner as the numbering of said buildings easterly of Front Street.

All buildings or houses which are located upon short or otherwise irregular streets which are not covered by the foregoing provisions shall be numbered as near like as possible that of the nearest adjoining blocks of regular streets running relatively in the same direction. In order to ascertain the proper position of a number in a block, the length of the block shall be divided by 50 and this will give the relative distance apart of each number.

Section 6. All ordinances or part of ordinances in conflict herewith are hereby repealed.

Passed by the Council and approved by the Mayor April 1, 1924.

ORDINANCE NO. 1358

AN ORDINANCE REGULATING THE MOVING OF BUILDINGS; PROVIDING FOR PROTECTION TO THE CITY FROM DAMAGES ARISING FROM SUCH MOVING; REQUIRING PERMITS AND FEES; PRESCRIBING PENALTIES FOR VIOLATION; AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. Definitions.

(a) Building. Any structure designed, built or occupied as a shelter or covered enclosure for persons, animals or property and used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. The following structures shall not fall within this definition:

(1) Trailers, mobile homes.

(2) Portable structures on skids.

(3) Prefabricated utility or construction sheds with floor space less than 225 square feet.

(4) Other structures with floor space less than 100 square feet and height less than 15 feet.

(b) City. City of Woodburn, Oregon.

(c) Person. Any individual person, firm, partnership, association, corporation, company or organization of any kind.

Section. 2. Permits. No person shall move any building over, along or across any highway, street, alley, sidewalk or public right-of-way in the city without first obtaining a permit from the city. A person seeking such a permit shall file an application for such permit with the city. The application shall be in writing on a form provided by the city for such purpose. The application shall contain the following:

(a) A description of the building proposed to be moved, including address, construction materials, dimensions, number of rooms and general condition.

(b) Legal descriptions of the lots from and to which the building is to be moved, including lot, block and tract numbers if within the city.

(c) The portion of the lot to be occupied by the building where moved, if within the city.

(d) The specific highways, streets, alleys, sidewalks and rights-of-way over, along or across which the building is to be moved.

(e) Date and hours of movement.

(f) Any additional information which the city engineer shall find necessary for a fair determination of whether a permit should [be issued].

Section 3. **Tax Certificate**. The owner of the building to be moved shall file with the application sufficient evidence that the building and lot from which it is to be moved are free of all city taxes and city charges and assessments against the same are paid in full.

Section 4. **Certificate of Ownership or Entitlement**. The applicant, if other than the owner, shall file with the application a written statement or document of sale signed by the owner, or other sufficient evidence that he is entitled to move the building.

Section 5. **Permit Fee.** The fee to be paid for each permit under this ordinance shall be $0.05 per square foot of floor space for one-story structures. Fees for structures in excess of one story shall be $0.05 per square foot of floor space for the lowermost story, and $0.03 per square foot of floor space of each additional story.

Section 6. **Deposit for Expense to City**. Upon receipt of an application, it shall be the responsibility of the city to estimate the expense that will be incurred in removing and replacing any electric wires, street lamps or pole lines belonging to the city, or any other property of the city, the removal and replacement of which will be required by reason of the moving of the building through the city, together with the cost of materials necessary to be used in making such removals and replacements. Prior to issuance of the permit, applicant shall deposit with the city a sum of money equal to twice the amount of the estimated expense.

Section 7. **Insurance**. An application hereunder shall be accompanied by a certificate of insurance certifying that the applicant has obtained a general liability insurance policy, issued by an insurance company authorized to do business in the state of Oregon, and approved as to form by the city attorney, which policy shall provide no less than the following coverage amounts:

(a) $100,000.00 bodily injury to one person.

(b) $300,000.00 per occurrence.

(c) $50,000.00 property damage.

Section 8. **Duties of the City**.

(a) Inspection. The city engineer shall inspect the building and the applicant's equipment to determine whether the standards for issuance of a permit are met.

(b) Standards for Issuance. The city shall refuse to issue a permit if it finds:

(1) That any application requirement or any fee or deposit requirement has not been complied with;

(2) That the building is too large to move without endangering persons or property in the city;

(3) That the building is in such a state of deterioration or disrepair or is otherwise so structurally unsafe that it could not be moved without endangering persons and property in the city;

(4) That the building is structurally unsafe or unfit for the purpose for which moved, if the removal location is in the city;

(5) That the applicant's equipment is unsafe and that persons and property would be endangered by its use;

(6) That zoning or other ordinances would be violated by the building in its new location; [or]

(7) That for any other reason persons or property in the city would be endangered by the moving of the building.

Section 9. Return of Deposits.

(a) Return upon nonissuance. Upon refusal to issue a permit, the city shall return to the applicant all deposits and insurance policies. Permit fees filed with the application shall not be returned.

(b) Return upon allowance for expense. After the building has been removed, the city engineer shall furnish the city administrator with a written statement of all expenses incurred in removing and replacing all property belonging to the city, and of all material used in the making of the removal and replacement, together with a statement of all damage caused to or inflicted upon property belonging to the city. If any wires, poles, lamps or other property are not located in conformity with governing ordinances, the permittee shall not be liable for the costs of removing the same. The city administrator shall authorize the city engineer to return to the applicant all deposits after deducting the sum sufficient to pay for all of the costs and expenses and for all damage done to property of the city by reason of the removal of the building. Permit fees deposited with the application shall not be returned. [Section 9 as amended by Ordinance No. 1464, passed February 24, 1975.]

Section 10. Routes. The city engineer shall prepare a route over which the building may be moved. In doing so, he shall take into consideration maximum safety to all relevant engineering consequences. The route shall be stated in the permit, and any building shall be moved only over said route.

Section 11. Responsibilities of Permittee. Permittee shall:

(a) Notify the city in writing of any and all damage done to property belonging to the city within 24 hours after such damage has occurred.

(b) Cause red lights to be displayed during the nighttime on every side of the building, while standing on a street, in such manner as to warn the public of the obstruction, and shall at all times erect and maintain barricades across the streets in such manner as to protect the public from damage or injury by reason of the removal of the building.

(c) Remove the building from the city streets after a reasonable period of time to be determined by the city engineer.

(d) Comply with the building code, the fire zone, the zoning ordinance, and all other applicable ordinances and laws, upon relocating the building in the city.

(e) Pay the expense of a traffic officer ordered by the city to accompany the movement of the building to protect the public from injury.

(f) Remove all rubbish and materials and fill all excavations to existing grade at the original building site so that the premises are left in a safe and sanitary condition.

(g) Insure that the sewer line is plugged with a concrete stopper, the water shot off, and the meter returned to the city. Permittee shall notify the gas and electric service companies to remove their services.

Section 12. Enforcement.

(a) Permittee liable for expense above deposit. The permittee shall be liable for any expense, damages or costs in excess of deposited amounts or securities, and the city attorney shall prosecute an action against the permittee in a court of competent jurisdiction for the recovery of such excessive amounts.

(b) Original premises left unsafe. The city shall proceed to do the work necessary to leave the original premises in a safe and sanitary condition, where permittee does not comply with the requirements of this ordinance, and the cost thereof shall be charged against the general deposit.

Section 13. Severability. Each section, subsection or other portion of this ordinance shall be severable; the invalidity of any section, subsection or other portion shall not invalidate the remainder.

Section 14. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 14 as amended by Ordinance 2008, passed October 24, 1988.]

Passed by the Council and approved by the Mayor June 11, 1993.

ORDINANCE NO. 1652

AN ORDINANCE ASSESSING A TECHNICAL AND ENVIRONMENTAL SERVICES CHARGE AND PROVIDING FOR ITS EXPENDITURE.

[Whereas clauses.]

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. **Construction Fee.** That a fee of one dollar ($1.50) per one thousand dollars ($1,000) of construction value shall be charged to all new construction in the City of Woodburn.

[Section 1 as amended by Ordinance 2370, passed August 23, 2004.]

Section 2. **Fee Collection**. This fee shall be collected by the Building Official prior to issuance of a building permit.

Section 3. **Technical and Environmental Services Fund**. The monies collected shall be placed in two funds: two-thirds of the monies shall be placed in the General Fund for planning services, and one-third of the monies shall be placed in the Technical and Environmental Fund for engineering services. These monies shall be used to meet the expenses necessary in providing planning and engineering services associated with reviewing building permit applications.

[Section 3 as amended by Ordinance 2370, passed August 23, 2004.]

Passed by the Council January 22, 1979, and approved by the Mayor January 23, 1979.

ORDINANCE NO. 1999

AN ORDINANCE PROVIDING FOR THE ABATEMENT OF BUILDING NUISANCES; REPEALING ORDINANCE 1620; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions**. For the purposes of this ordinance, the following mean:

Dangerous Building.

(a) A structure that, for lack of proper repairs or because of age and dilapidated condition or of poorly installed electrical wiring or equipment, defective chimney, gas connection or heating apparatus, or for any other reason, is liable to cause fire, and which is situated or occupied in a manner that endangers other property or human life.

(b) A structure containing combustible or explosive materials or inflammable substances liable to cause fire or danger to the safety of the building, premises or to human life.

(c) A structure that is in a filthy or unsanitary condition liable to cause the spread of contagious or infectious disease.

(d) A structure in such a weak, dilapidated or deteriorated condition that it endangers a person or property because of the probability of partial or entire collapse.

Person. Every natural person, firm, partnership, association or corporation.

Section 2. **Nuisance Declared**. Every building found by the Council to be a dangerous building is declared to be a public nuisance and may be abated by the procedures specified in this ordinance or by a suit for abatement brought by the city.

Section 3. **Initial Action**. When a city official determines that there is a dangerous building, the official shall report it to the Council. The Council shall, within a reasonable time, fix a time and place for a public hearing.

Section 4. **Mailed Notice**.

(a) The City Recorder shall notify the owner of the building and, if not the same person, the owner of the property on which the building is situated. The notice shall state:

(1) That a hearing will be held concerning the nuisance character of the property, and

(2) The time and place of the hearing.

(b) A copy of this notice shall be posted on the property.

Section 5. **Published Notices**. Ten days' notice of the hearing shall be published in a newspaper of general circulation in the city or by posting notices in three public places in the city.

Section 6. **Hearing**.

(a) At the hearing, the owner or other persons interested in the dangerous building shall have a right to be heard.

(b) The Council may inspect the building and may consider the facts observed by it in determining if the building is dangerous.

(c) If the Council determines that the building is dangerous, the Council may by resolution:

(1) Order the building to be abated; or

(2) Order the building to be made safe and prescribe what must be done to make it safe.

Section 7. **Council Order; Notice**. Five day's notice of the Council's findings and any order made by the Council shall be given to the owner of the building, the owner's agent or other person controlling it. If the orders are not obeyed and the building not made safe within the time specified by the order (being not less than five days), the Council may order the building demolished or made safe at the expense of the property on which it is situated.

Section 8. **Abatement by the City**.

(a) If the Council orders are not complied with, the Council may:

(1) Specify the work to be done;

(2) Advertise for bids for doing the work in the manner provided for advertising for bids for street improvements.

Section 9. **Assessment.**

(a) The Council shall determine the probable cost of the work and assess the costs against the property upon which the building is situated. The assessment shall be declared by resolution, and it shall be entered in the docket of city liens and become a lien against the property.

(b) The creation of the lien and the collection and enforcement of the cost shall be performed in substantially the same manner as assessments for street improvements.

Section 10. Summary Abatement. The procedures of this ordinance need not be followed if a building is unmistakably dangerous and imminently endangers human life or property. In this instance, the city may summarily demolish the building.

Section 11. Errors in Procedure. Failure to conform to the requirements of this ordinance that does not substantially affect a legal right of a person does not invalidate a proceeding under this ordinance.

Section 12. Civil Infraction.

(a) A violation of any provision of this ordinance constitutes a class 1 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 12(a) as amended by Ordinance 2008 passed October 24, 1988.]

(b) Subsection (a) of this section provides an alternative remedy to the abatement provisions contained elsewhere in this ordinance and shall not be read to prohibit abatement of building nuisances as so provided.

Section 13. Repeal. Ordinance 1620 is hereby repealed.

Section 14. [Emergency clause.]

Passed by the Council May 23, 1988, and approved by the Mayor May 23, 1988.

ORDINANCE NO. 2018

AN ORDINANCE REGULATING AND CONSTRAINING DEVELOPMENT AND CONSTRUCTION WITHIN THE FLOOD PLAIN AREAS OF WOODBURN, REPEALING ORDINANCE NO. 1967, AND DECLARING AND EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Purpose and Intent**. It is the purpose and intent of this ordinance to promote the public health, safety and welfare, and to minimize public and private losses due to flood conditions by regulating and constraining development and construction within the flood plain areas of Woodburn.

Section 2. **Definitions**.

(A) "Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FIRM. Zone A is usually refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH or AR/A. (Amended by Ordinance 2253, January 10, 2000)

B) "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." (Amended by Ordinance 2253, January 10, 2000)

(C) "Development" means any man-made changes to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area of special flood hazard.

(D) "FIRM". An acronym for Flood Insurance Rate Map. This is the official map of the community, on which has been delineated both the special hazard areas and the risk premium zones applicable to the City of Woodburn. (Amended by Ordinance 2253, January 10, 2000)

(E) "Flood or Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas.

(F) "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that is an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations. (Amended by Ordinance 2253, January 10, 2000)

(G) "Floodway" means the channel of a stream or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing water surface elevations more than one(1) foot.

(H) "Lowest Floor" means the lowest floor of the lowest enclosed area (including a basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this ordinance found at Section 5(A)(2). (Amended by Ordinance 2253, January 10, 2000)

(I) "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For insurance purposes the term "manufactured home" does not include a "recreational vehicle" which is: built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. (Amended by Ordinance 2253, January 10, 2000)

(J) "Mean Sea Level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations on the city's FIRM are referenced. (Amended by Ordinance 2253, January 10, 2000)

(K) "New Construction" means structures for which the start of construction commenced on or after the effective date of this ordinance.

(L) "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the excavation for a basement, footings, piers, or foundation or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. (Amended by Ordinance 2253, January 10, 2000.)

(M) "Storm Water Management Plan" means the section of the City's officially adopted Comprehensive Plan which deals with storm water and flood water management. (Amended by Ordinance 2253, January 10, 2000)

(N) "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. (Amended by Ordinance 2253, January 10, 2000)

(O) Substantial Improvement" means any reconstruction, rehabilitation, addition or other improvement of the structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction "of the improvement. This term includes structures which have incurred damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the city code enforcement official and which are the minimum necessary to assure safe living conditions or,

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

(Amended by Ordinance 2253, January 10, 2000.)

Section 3. General Provisions.

(A) Land to which this ordinance applies. This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Woodburn.

(B) Subdivision Proposals:

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (which ever is less).

(C) Review of Building Permits: Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high-water marks, photographs of past flooding, etc, where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(D) Basis for establishing the areas of special flood hazard. The area of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Marion County and Incorporated Areas" dated January 19, 2000, with accompanying flood insurance maps is hereby adopted by reference and declared to be a part of this ordinance. In addition, the City's Storm Water Management Plan is also adopted by this ordinance and included as a part thereof. (Amended by Ordinance 2253, January 10, 2000)

(E) Minimum floor elevations for structures in the flood hazard area. THE MINIMUM FLOOR ELEVATIONS FOR STRUCTURES IN THE FLOOD HAZARD AREAS SHALL BE DETERMINED ON A SITE SPECIFIC BASIS USING SURVEYS AND SURVEY DATA OR DATA FOUND TO BE ACCEPTABLE UNDER THE SECTIONS OF THIS ORDINANCE OR THE NATIONAL FLOOD INSURANCE STANDARDS.

(F) Floodways defined. The following floodways are hereby defined by this ordinance:

(1) For Mill Creek main drainage channel A MAXIMUM FLOODWAY WIDTH OF 150 FEET AS DEFINED ON DATA TABLE #6 OF THE MARION COUNTY AND INCORPORATED AREA FLOOD INSURANCE STUDY. (Amended by Ordinance 2253, January 10, 2000)

(2) For Senecal Creek main channel, a MAXIMUM FLOODWAY WIDTH OF 145 FEET AS DEFINED ON DATA TABLE #2 OF THE MARION COUNTY AND INCORPORATED AREA FLOOD INSURANCE STUDY. (Amended by Ordinance 2253, January 10, 2000)

(3) For the tributary in drainage basin no. 2 as defined on the Storm Water Management Plan, a floodway of 80 feet from the confluence with tributary no. 2 with Mill Creek upstream 1,600 feet.

(4) For the tributary in drainage basin no. 3, a floodway channel of 60 feet from the confluence of tributary no. 3 with the main Mill Creek channel upstream 1,000 feet.

(5) For the tributary in drainage basin no. 5, a floodway of 80 feet from the confluence of tributary No. 5 with the Mill Creek channel upstream 1,600 feet.

(6) For the tributary in drainage basin no. 6, a floodway of 100 feet from the confluence of tributary no. 6 with the Mill Creek channel upstream 1,000 feet, a floodway of 80 feet from 1,000 to 1,500 feet, and a floodway of 60 feet from 1,500 feet to 2,000 feet above the confluence of Mill Creek.

(7) For the tributary in drainage basin no. 7, a floodway of 80 feet from the confluence of tributary no. 7 with Mill Creek upstream 1,800 feet.

(8) For the Senecal Creek tributary which is unnumbered on the Storm Water Management Plan but which drains the area from Interstate 5 to Woodland Avenue, a floodway of 80 feet from the point of its confluence with Senecal Creek upstream to the point at which it crosses underneath State Highway 214.

(G) In addition to the above mentioned floodways, a floodway of 40 feet shall be maintained on all open existing drainage channels within the City of Woodburn.

Section 4. Administration.

(A) Establishment of development permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3 (F). The permits shall be for all structures including manufactured homes as set forth in the definitions and for all other developments including fill and other activities as also set forth in the definitions. (Amended by Ordinance 2253, January 10, 2000)

(B) Designation of the City Engineer. The City Engineer, or his designate, is hereby appointed to administer and implement this ordinance by granting or denying development applications in accordance with its provisions.

(C) Duties and responsibilities of the City Engineer. Duties of the City Engineer shall include, but are not limited to:

(1) Permit review. Review all development permits to determine whether the permit requirements of this ordinance have been satisfied.

(2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review all development permits to determine if the proposed development is located in the floodway.

(4) Review all requests to fill in the flood hazard area to determine if the requests are in conformance with the criteria set forth in this ordinance.

(D) Use of other base flood data. When base flood elevation data has not been provided in accordance with Section 3(B), (C), basis for establishing the areas of special flood hazard, the City Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal, state, or other sources in order to administer the provisions of this ordinance.

(E) Information to be obtained and maintained.

(1) Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 4(D), obtain and record the actual elevation in relation to mean sea level of the lowest floor (including basement) of all new or substantially improved structures and whether or nor the structure contains a basement.

(2) For all new or substantially improved flood-proof structures:

(i) Obtain and record the actual elevation (in relation to mean sea level) and,

(ii) Maintain the flood proofing certifications required in Section 6(B)(3).

(iii) Elevations required above shall be provided by the owner along with a certification by an engineer or registered land surveyor of the actual elevation above mean sea level of the lowest floor of the structure.

(F) Alteration of water courses.

(1) Notify adjacent communities and the state agency responsible prior to any alteration or relocation of a water course, and submit evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered and relocated portion of said water course so that the flood carrying capacity is not diminished.

(Amended by Ordinance 2253, January 10, 2000)

Section 5. General Standards. In all areas of special flood hazards the following standards are required.

(A) Anchoring.

(1) All new construction and substantial improvements to existing structures shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes in a special flood hazard area shall be placed on fill AND elevated to the minimum elevations established in Section 3(C) or 1.5 feet above the elevation of the base flood.

(3) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(B) Utilities.

(1) All new and replacement water supply systems shall be designed and constructed to minimize or eliminate infiltration of flood waters into the system.

(2) New and replacement sanitary sewer systems shall be designed and constructed to minimize or eliminate infiltration of flood waters into the systems and discharge of the systems into the flood waters.

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(C) Storage of materials and equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by flood-waters, are prohibited in the flood hazard area. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning, however, no storage is allowed in the floodway.

Section 6. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided in this ordinance under Section 3(C) or Section 4(D), the following provisions are required.

(A) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(B) All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured homes is ABOVE the base flood elevation and be securely anchored or an adequately anchored foundation system in accordance with the provisions of Section 5(A)(2) and 5(A)(3).

(C) Residential Construction. New construction and substantial improvement of any residential structures shall have the lowest floor, including basement, elevated to or above the elevation established in Section 3(C), or 1.5 feet above the elevation established in Section 3(D) and 4(D).

(D) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(E) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the elevation established in Section 3(C), or 1.5 feet above the elevation of the base flood established in Section 3(D) and 4(D)l or, together with the attendant utility and sanitary facilities shall:

(1) Be flood proofed so that below the base flood level of the structure is water-tight with walls substantially impermeable to the passage of water.

(2) Have structural components capable of resisting hydrostatic loads and effect of buoyancy in a base flood.

(3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice of meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the City Engineer.

(4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 6(A).

(5) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

Section 7. Floodways.

(A) IN THE FLOODWAYS AS DEFINED UNDER SECTION 3(F), NO ENCROACHMENTS INCLUDING FILL, NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS, AND OTHER DEVELOPMENT, WITHIN THE ADOPTED REGULATORY FLOODWAY THAT WOULD RESULT IN ANY INCREASE IN FLOOD LEVELS, IS PERMITTED.

(B) THE NORMAL AND ROUTINE MAINTENANCE OF STREAM CHANNELS IS NOT PRECLUDED BY THIS ORDINANCE PROVIDED SUCH MAINTENANCE COMPLIES WITH THE NO RISE STANDARD IN FLOOD LEVELS AS OUTLINED IN SECTION 7(A).

Section 8. Fill Standards

(A) All structures built in the special flood area shall be constructed on engineered fill or shall have designed footings at suitable depth, both as required by the Uniform Building Code, or in conformance with other additional standards as required by the City Engineer in accordance with good engineering practices.

(B) The slope on a fill in the special flood hazard area shall not exceed 33%. Toe of such fill shall be outside the floodways defined in Section 3(D).

(C) The amount of fill in the special flood hazard area shall be kept to a minimum. The following standards shall apply.

(1) Only one structure per existing lot at the time of passage of this ordinance shall be allowed for areas within the special flood hazard area. The structure shall be located so that a minimum amount of fill will be necessary for the elevation of the structure above the flood level.

(2) All subdivision, partition, and planned unit developments which envision development of any special flood hazard area shall indicate on the preliminary plan the location of all structures proposed to be located in the flood hazard area. These structures shall be located so that a minimum amount of fill is required to develop the land.

(3) Development proposals, whether nonresidential or residential, together with public utilities and facilities attendant to them, shall be constructed to minimize flood damage, and adequate drainage shall be provided. In areas not covered by Section 3(B), flood elevation data shall be provided by the developer.

(4) Multiple family residential or nonresidential structures shall be located as far as practical on the existing contiguous property from the floodway.

Section 9. Density Transfer. The Planning Commission may, upon application under the variance procedure, allow a higher density of dwelling units or structures on a parcel of property which contains areas of special flood hazard if the areas of special flood hazard are left substantially without fill. The Commission shall determine the amount of fill which would practicably be allowed in the flood hazard, and the additional amount of density on land outside the special flood hazard area which should be allowed due to the loss of the developable land in the flood hazard area.

Section 10. Variances. Variances to this ordinance shall comply with the same standards and follow the same procedures for variances to the Zoning Code of the City of Woodburn.

Section 11. Enforcement.

(A) Violation of this ordinance is a CLASS I CIVIL INFRACTION and shall be punishable by a fine of up to $500 for the first offense (finding of violation), and by a fine of up to $500 for the second and succeeding offenses (finding of violation). A separate offense will be deemed to occur on each calendar day that the infraction continues to exist, and a separate citation may be filed for each such offense.

(B) Alternate Remedy. If a parcel of land is, or is proposed to be used, developed, or maintained in violation of this ordinance, the aforesaid use shall constitute a nuisance, and the City may, as an addition to other remedies that are legally available for enforcing this ordinance institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful use, development, or maintenance of the land.

Section 12. Violation as Nuisance. Violation of any provision of this ordinance is hereby declared to be a nuisance, for which remedy may be pursued by the City to the full extent of law, notwithstanding any limitation in this or any other ordinance.

Section 13. Severability. If any word, clause, phrase, section, subsection, or other portion of this ordinance is found invalid by a court of competent jurisdiction, then the remainder of the ordinance shall be given full effect.

Section 14. Ordinance Repealed. Ordinance No 1967 is hereby repealed and Ordinance No. 1664 is not thereby resurrected.

Section 15. [Emergency clause.]

Passed by the Council and approved by the Mayor March 27, 1989

ORDINANCE NO. 2415

AN ORDINANCE ADOPTING CERTAIN STATE SPECIALTY CODES; SETTING FORTH THE POWERS AND DUTIES OF THE BUILDING OFFICIAL; PROVIDING FOR PROCEDURES AND FEES; ESTABLISHING PENALTY PROVISIONS; REPEALING ORDINANCE 2293 AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Definitions.** For the purpose of this Ordinance, the following terms shall mean:

A. Building Official - means the City of Woodburn Building Official who is responsible for building inspections and with the administration and enforcement of this ordinance.

B. State Building Code - or "the code" means the combined specialty codes adopted by this ordinance.

Section 2. **State Codes Adopted.** The following codes, standards and rules are adopted and are by this reference incorporated herein and shall be in force and effect within the corporate boundaries of the City of Woodburn:

A. The Oregon Structural Specialty Code, as adopted by the State of Oregon, including the following administrative provisions:

1. Section 104.2 (Applications and permits).

2. Section 104.4 (Inspections).

3. Section 104.7 (Department Records).

4. Section 104.8 (Liability).

5. Section 104.9 (Approved materials and equipment).

6. Section 104.10 (Modifications).

7. Section 104.11 (Alternate materials, design and methods of construction and equipment).

8. Section 104.12 (Requests for rulings).

9. Section 105.3.2. (Time limit of application). "An application for a permit for any proposed work shall be deemed to have been abandoned 180 days

after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one extensions of time for an additional period not exceeding 180 days. The extension shall be requested in writing and justifiable cause demonstrated."

10. AN109.4 (Alternative fire sprinkler system requirements).

(Section 2A as amended by Ordinance 2420 dated May 29, 2007)

B. The Oregon Mechanical Speciality Code, as adopted by the State of Oregon, including the following administrative provision:

1. Section 106.4.3. (Time limit of application). "An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one extensions of time for an additional period not exceeding 180 days. The extension shall be requested in writing and justifiable cause demonstrated."

C. The Oregon Residential Specialty Code, as adopted by the State of Oregon, including the following administrative and automatic fire sprinkler system provisions:

1. Section 105.3.2 (Time limit of application). "An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one extension of time for an additional period not exceeding 180 days. The extension shall be requested in writing and justifiable cause demonstrated."

2. Sections AN109.4.2 through AN109.4.3 (Fire sprinkler system requirements).

3. Section AN109.4.3 (Definition: Substantially altered or damaged). "The valuation to repair or alter the building or structure exceeds 60 percent of the value of that portion of the building or structure as defined in the building code and determined by the Building Official."

D. The Oregon Plumbing Specialty Code as adopted by the State of Oregon.

E. The Electrical Safety Law as contained in ORS 479.510 to 479.995.

F. The Oregon Fire Code Amendments, as adopted by the State of Oregon;

G. Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and 446.230;

H. Manufactured dwelling park and mobile home park requirements under ORS Chapter 446;

I. Park and camp program requirements under ORS 455.680;

J. Tourist facility requirements under ORS 446.310 to 446.350;

K. Manufactured dwelling alterations under ORS 446.155; and

L. Manufactured structure accessory buildings and structures under ORS 446.253.

Section 3. **Powers and Duties of the Building Official**. The Building Department shall be under the administrative and operational control of the building official. The building official shall have the power to render written and oral interpretations of the code and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of the code. The building official is authorized to enforce all the provisions of the code.

Section 4. **Right of Entry**. When it is necessary to make an inspection to enforce the state building code, or when the building official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of the code which makes the building or premises unsafe, dangerous or hazardous, the building official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by the code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

Section 5. **Stop Work Orders**. Whenever any work is being done contrary to the provisions of the code, or other pertinent laws or ordinances implemented through the enforcement of the code, the building official may order the work stopped by notice in writing served on any person(s) engaged in the doing or causing such work to be done. Such person(s) shall forthwith stop such work until specifically authorized by the building official to proceed with the work. Notwithstanding the other remedies, if the building official determines that any building under construction, mechanical work, electrical work, or plumbing work on any building or structure poses an immediate threat to the public health, safety or welfare, the building official may order the work halted and the building or structure vacated pending further action by the city and its legal counsel.

Section 6. **Authority to Disconnect Utilities in Emergencies**. The building official or the building official's authorized representative shall have the authority to disconnect fuel-gas utility service, or energy supplies to a building, structure, premises or equipment regulated by the code in case of emergency when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or premises of the decision to disconnect prior to taking such action, and shall notify such serving

utility, owner and occupant of the building, structure or premises in writing of such disconnection immediately thereafter.

Section 7. **Connection After Order to Disconnect**. Persons shall not make connections from an energy, fuel or power supply nor supply energy or fuel to any equipment regulated by the code which has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the building official, until the building official authorizes the reconnecting and use of such equipment.

Section 8. **Occupancy Violations**. Whenever any building or structure or equipment is being used contrary to the provisions of the code, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use. Such person shall discontinue the use within the time prescribed by the building official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of the code.

Section 9. **Appeals Process**. When there is an appeal of a staff interpretation of the code during plan review or inspection, the aggrieved persons shall be notified of the provisions of ORS 455.475 and the following procedures:

A. Plan Review. In an informal appeal of a plans examiner's decision, the plans examiner shall refer the request and any related information to the building official who, in consultation with appropriate technical staff, shall review the request and make a final determination in writing to the applicant within 15 days.

In an informal appeal of the building official's decision, the request shall be forwarded to the State of Oregon, Building Codes Division staff person responsible for interpretations. Formal appeals shall be forwarded to the appropriate state board at the Building Codes Division for final action. The appeal shall be sent to the Department of Consumer Business Services, Building Codes Division accompanied by the required fee, a completed appeal form of the department, and justification for the request along with any supporting information. (ORS 455.690)

B. Inspection. When there is an appeal of a field inspector's interpretation of a particular code, the following process shall be used:

1. The field inspector shall refer the customer and related information to the building official. The building official, in consultation with appropriate technical staff, shall review the request and make a final decision in writing to the customer within 15 days.

2. Formal appeals of the building official shall be forwarded to the appropriate state board for final action. The appeals shall be sent to the Department of Consumer Business Services, accompanied by the required fee, a completed appeal form of the department, and justification for the request along with any supporting information. (ORS 455.690)

3. In accordance with ORS 455.690, any person aggrieved by a final decision may, within 30 days after the date of the decision, appeal to the appropriate state advisory board as listed below:

- Structural Code - Building Codes Structures Board
- Mechanical Code - Mechanical Board
- Residential Code - Residential Structures Board
- Plumbing Code – Oregon State Plumbing Board
- Electrical Code – Electrical & Elevator Board
- **Manufactured Home Installation Standard - Manufactured Structures & Parks Board.**
- Park & Camp Rules - Manufactured Structures & Parks Board

C. Appeals of Board Decisions. Judicial review of the decision of advisory boards shall be available as provided in Oregon Revised Statutes Chapter 183.

Section 10. Permits Not Transferable. A permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder.

Section 11. Suspension/Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of the state building code whenever the permit is issued in error or on the bases of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of the code.

Section 12. Inspections. It shall be the duty of the permit holder or his agent to request all necessary inspections in a timely manner, provide access to the site, and provide all necessary equipment as determined by the building official. The permit holder shall not proceed with the building construction until authorized by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or his agent.

Section 13. Fees.

A. Fees for permits, inspections, plan checks, site plan review, copy costs, and such other fees that the City Council deems reasonable in order to administer this ordinance shall be set by ordinance or resolution.

B. The building official may authorize the refunding of fees paid in accordance with the refund policy in effect.

C. The determination of value or valuation under any provisions of the state building code shall be made by the building official. The value to be used in computing the building permit and plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, hearing, air conditioning, elevators, fire-extinguishing systems and any other permanent or attached equipment.

Section 14. Savings Clause. If any section, paragraph, subdivision, clause, sentence, or provisions of the ordinance shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of the ordinance.

Section 15 Violations; Penalties; Remedies.

A. No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of this Ordinance.

B. No person shall install, alter, replace, improve, convert, equip or maintain any mechanical equipment or system in the City, or cause the same to be done contrary to or in violation of this Ordinance.

C. No person shall install, alter, replace, improve, convert, equip or maintain any plumbing or drainage piping work or any fixture or water heating or treating equipment in the City, or cause the same to be done contrary to or in violation of this Ordinance.

D. No person shall install, alter, replace, improve, convert, equip or maintain any electrical equipment or system in the City, or cause the same to be done contrary to or in violation of this Ordinance.

E. Violation of a provision of this Ordinance shall be subject to a Civil Penalty not exceeding $5,000.00 for a single violation of $1,000.00 for continuing violations and shall be processed in accordance with the procedures set forth in this Ordinance.

F. Each day that a violation of a provision of this Ordinance exists constitutes a separate violation.

G. The penalties and remedies provided in this section are not exclusive and are in addition to all other penalties and remedies available to the City.

H. Notwithstanding the other remedies in this Ordinance, if the Building Official determines that any building under construction, mechanical work, electrical work, or plumbing work on any building or any structure poses an immediate threat to the public health, safety or welfare, the Building Official may order the work halted and the building or structure vacated pending further action by the City and its legal counsel. (Section 15 as amended by Ordinance 2461 and adopted December 15, 2009)

Section 15A Building Official • Authority to Impose Administrative Civil Penalty.

A. In addition to, and not in lieu of, any other enforcement mechanism authorized by this Ordinance, upon a determination by the Building Official that a person has violated a provision of this Ordinance, the Building Official may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

B. Prior to imposing an administrative civil penalty under this section, the Building Official shall pursue reasonable attempts to secure voluntary correction, failing which the Building Official may issue a notice of civil violation to one or more of the responsible persons to correct the violation. Except where the Building Official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days.

C. Following the date or time by which the correction must be completed as required by an order to correct a violation, 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, the Building Official may impose a civil penalty on each person to whom an order to correct was issued.

D. Notwithstanding subsection (B) above, the Building Official may impose a civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the Building Official determines that the violation was knowing or intentional or a repeat of a similar violation.

E. In imposing a penalty authorized by this section, the Building Official shall consider:

1. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
2. Any prior violations of statutes, rules, orders, and permits;
3. The gravity and magnitude of the violation;
4. Whether the violation was repeated or continuous;
5. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
6. The violator's cooperativeness and efforts to correct the violation; and
7. Any relevant provision of the Building Code or City Ordinance.

F. The notice of civil penalty shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days

after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. A notice of civil penalty shall include:

1. Reference to the particular code provision or rule involved;
2. A short and plain statement of the matters asserted or charged;
3. A statement of the amount of the penalty or penalties imposed;
4. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (D), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
5. A statement of the party's right to appeal the civil penalty to the City Administrator or City Administrator's designee.

G. Any person who is issued a notice of civil penalty may appeal the penalty to the City Administrator or City Administrator's designee. The City Administrator's designee shall not be the Building Official or Building Inspector.

H. A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Administrator or City Administrator's designee pursuant to, and within the time limits established by this Ordinance. If the responsible person appeals the civil penalty to the City Administrator or City Administrator's designee, the penalty shall become final, if at all; upon issuance of the City Administrator or City Administrator's designee's decision affirming the imposition of the administrative civil penalty.

I. Each day the violator fails to remedy the violation shall constitute a separate violation.

J. Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in subsection (H) shall constitute a violation of this Ordinance. Each day the penalty is not paid shall constitute a separate violation. The Building Official also is authorized to collect the penalty by any administrative or judicial action.The civil administrative penalty authorized by this section shall be 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.

K. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this Ordinance resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 days after such penalty become final, the Building Official shall assess the property the full amount of the unpaid fine and

shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the Building Official shall notify the responsible person that the

penalty has been assessed against the real property upon which the violation occurred and has been entered in the docket of City liens.

L. In addition to enforcement mechanisms authorized elsewhere in this Ordinance, failure to pay an administrative civil penalty imposed pursuant to subsection (A) of this section shall be grounds for withholding issuance of requested permits or licenses, or revocation or suspension of any issued permits or certificates of occupancy.

M. This Ordinance does not prohibit the City from charging an increased permit fee or investigation fee, seeking injunctive relief from a violation or taking any enforcement action that does not include a monetary penalty. (Section 15A as amended by Ordinance 2461 and adopted December 15, 2009)

Section 15B Appeal Procedures.

A. A person aggrieved by an administrative action of the Building Official taken pursuant to a section of this Ordinance authorizing an appeal under this section may, within 15 days after the date of notice of the action, appeal in writing to the City Administrator or City Administrator's designee. The appeal 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.

An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be dismissed.

B. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

C. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Administrator or City Administrator's designee within 30

days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

D. The City Administrator or City Administrator's designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Administrator or City Administrator's designee deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel.

E. The City Administrator or City Administrator's designee shall issue a written decision within 10 days of the hearing date. The decision of the City Administrator or City Administrator's designee after the hearing is final. (Section 15B as amended by Ordinance 2461 and adopted December 15, 2009)

Section 16. **Repeal**. Ordinance No. 2293 is hereby repealed.

Section 17. [Emergency clause.]

Passed by the Council December 11, 2006, and approved by the Mayor December 13, 2006.

ORDINANCE NO. 2445

AN ORDINANCE REQUIRING HABITABLE RENTAL HOUSING AND PROVIDING FOR ADMINISTRATION AND ENFORCEMENT.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. This Ordinance shall be known as the "Habitable Rental Housing Ordinance."

Section 2. Legislative Findings.

A. The City Council finds that a safe, decent place to live is a basic necessity that enables families to meet other basic necessities and save for their future.

B. The City Council further finds there are a growing number of residential rental properties within the City, and that many of these properties are in a declining state of maintenance.

C. The City Council further finds that inadequate maintenance directly affects the health, life, safety and welfare of the residents of the City of Woodburn and impacts the health and vitality of the surrounding neighborhood and the City as a whole.

D. The City Council further finds that it is necessary to adopt this Ordinance so that Rental Housing in the City is maintained in a good, safe, and sanitary condition and does not create a nuisance or blighted conditions to its surroundings.

E. The City Council further finds that the adoption of this Ordinance is a reasonable method of insuring suitable housing, safe and viable neighborhoods and a healthy City.

Section 3. Purpose. The purpose of this Ordinance is to provide minimum habitability criteria to safeguard health, property and public welfare of the Owners, occupants and users of residential rental buildings.

Section 4. State of Oregon Residential Landlord and Tenant Act. This Ordinance is intended to supplement and not conflict with the habitability standards of the Oregon Residential Landlord and Tenant Act.

Section 5. Scope.

A. Except as described below, these standards shall apply to Rental Housing located within the City.

B. Notwithstanding subsection 5A and consistent with the Oregon Residential Landlord and Tenant Act, the following are exempted from the application of this Ordinance:

1. Hotels, motels and lodging houses;

2. Hospitals and other medical facilities;

3. Nursing care facilities as defined in the Woodburn Development Ordinance; and

4. Group homes and group care facilities as defined in ORS Chapter 443.

Section 6. **Complaints**. Complaints under this Ordinance will be initiated on a form provided by the City containing the following information:

A. The name of the Person filing the complaint.

B. The name of the Landlord.

C. The address of the alleged violation.

D. A description of the alleged violation.

E. Where the Tenant is the Complainant, a certification that reasonable efforts were made to provide the Landlord with notice of the alleged violation.

Section 7. **Definitions.** For purposes of this Ordinance, the following definitions shall apply:

Dwelling Unit. A single unit providing complete independent living facilities for one or more Persons including provisions for living, sleeping, eating, cooking, and sanitation. For purposes of this Ordinance, where portions of a residential building are occupied under separate Rental Agreements, but tenants share eating, cooking, and/or sanitation facilities, each portion under a separate Rental Agreement shall be considered a Dwelling Unit.

Enforcement Officer. A police officer, code enforcement officer or other city official authorized by the City Administrator to enforce this Ordinance.

Landlord. The Owner, lessor, or sublessor of a Dwelling Unit or a party acting as an authorized agent of the Owner, lessor or sublessor.

Owner includes a mortgagee in possession and means one or more Persons, jointly or severally, in whom is vested: (a) all or part of the legal title to property; or (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.

Person. Any natural Person, firm, partnership, association or corporation.

Rental Agreement. All agreements, written or oral, concerning the use and occupancy of a Dwelling Unit and premises.

Rental Housing. A Dwelling Unit which is the subject of a Rental Agreement.

Section 8. Maintenance of Dwelling Unit in Habitable Condition.

A. A Landlord shall at all times during the tenancy maintain the Dwelling Unit in a habitable condition. For purposes of this section, a Dwelling Unit shall be considered unhabitable if it substantially lacks:

1. Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;

2. Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;

3. A water supply approved under applicable law, which is:

a. Under the control of the Tenant or Landlord and is capable of producing hot and cold running water;

b. Furnished to appropriate fixtures;

c. Connected to a sewage disposal system approved under applicable law; and

d. Maintained so as to provide safe drinking water and to be in good working order to the extent that the system can be controlled by the Landlord;

4. Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;

5. Electrical lighting with wiring and electrical equipment which conform to applicable law at the time of installation and maintained in good working order;

6. Buildings, grounds and appurtenances at the time of the commencement of the Rental Agreement in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the Landlord kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

7. Except as otherwise provided by local ordinance or by written agreement between the Landlord and the Tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the Rental Agreement, and the Landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal;

8. Floors, walls, ceilings, stairways and railings maintained in good repair;

9. Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the Landlord;

10. Safety from fire hazards, including a working smoke alarm or smoke detector, with working batteries if solely battery-operated, provided only at the beginning of any new tenancy when the Tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the Tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 (6); or

11. Working locks for all dwelling entrance doors, and, unless contrary to applicable law, latches for all windows, by which access may be had to that portion of the premises which the Tenant is entitled under the Rental Agreement to occupy to the exclusion of others and keys for such locks which require keys.

Section 9. Abatement Notice. Whenever a violation of this Ordinance is found to exist within the corporate limits of the city and the Enforcement Officer elects to proceed by abatement, the Enforcement Officer shall give written notice, by a type of mail that requires a signed receipt, to the Landlord of the property upon which the violation exists.

Section 10. Abatement. Upon receipt of the notice that a violation exists, the Landlord shall have thirty (30) days to abate the violation.

Section 11. Notice Requirements. The notice to abate the violation shall contain the following:

A. An order to abate the violation within thirty (30) days;

B. The location of the violation;

C. A description of what constitutes the violation;

D. A statement that if the violation is not abated within the prescribed time, the City will seek civil penalties under this Ordinance; and

E. A statement that a Person who is dissatisfied with the abatement notice has the right to judicial review under this Ordinance.

Section 12. Request for Judicial Review. The Landlord may file a written request for judicial review in the Woodburn Municipal Court within ten (10) days of the date that the notice to abate was mailed.

Section 13. Requirements for Request. The request for judicial review need not be in any particular form, but should substantially comply with the following requirements:

A. Be in writing;

B. Identify the place and nature of the alleged violation;

C. Specify the name and address of the Landlord seeking judicial review; and

D. Identify the Enforcement Officer alleging that a violation exists.

A copy of the request for judicial review shall be served on the Woodburn City Attorney's office.

Section 14. Scheduling of Judicial Review.

A. The judicial review hearing shall be held within ten (10) days after the request for judicial review is made. The day may be postponed by:

1. Agreement of the parties; or

2. Order of the court for good cause.

B. After a hearing is scheduled, the court shall promptly notify the parties as to the time and location of the hearing.

Section 15. Judicial Review Hearing. At the judicial review hearing the City and the Landlord shall have the right to present evidence and witnesses and to be represented by legal counsel at their own expense. After due consideration of pertinent information and testimony, the court shall make its findings. The findings shall be based on substantial evidence and shall be final.

Section 16. Notification of Violation. The Landlord shall be notified by a type of mail that requires a signed receipt postmarked no later than five days after the findings are entered by the court or by personal delivery by a representative of the City. Upon notification of violation, the Landlord shall have 30 days to abate the violation.

Section 17. Enforcement.

A. Inspection and Right of Entry. Whenever the Enforcement Officer has reasonable cause to suspect a violation of any provision of this Ordinance, the Enforcement Officer may enter on any site or into any structure for the purposes of investigation provided that no premises shall be entered without first attempting to obtain the consent of the Owner or person in control of the premises if other than the Owner. If consent cannot be obtained, the Enforcement Officer shall secure a search warrant before further attempts to gain entry, and shall have recourse to every other remedy provided by law to secure entry.

B. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil

Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance.

C. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the city to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate any violations of this Ordinance.

Section18. Prohibition on Retaliatory Conduct by Landlord. No Landlord may terminate a tenancy, increase rent, decrease services or refuse to renew a lease or tenancy because a Tenant has in good faith:

A. Filed a complaint under this Ordinance; or

B. Requested the Landlord to make repairs to a premises as required by this Ordinance; or

C. Provided information or testified in any proceeding involving the enforcement of this Ordinance.

Section 19. Separate Offenses. Each day during which a violation of this Ordinance continues shall constitute a separate offense for which a separate penalty may be imposed.

Section 20. Severability. If any section, paragraph, subdivision, clause, sentence, or provisions of this Ordinance shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of the title, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this Ordinance notwithstanding the parts to be declared unconstitutional and invalid.

Passed by the Council September 8, 2008 and approved by the Mayor September 10, 1008.

ORDINANCE NO. 1101

AN ORDINANCE GRANTING A REVOCABLE PERMIT TO PACIFIC NORTHWEST BELL TELEPHONE COMPANY TO INSTALL, MAINTAIN, AND OPERATE PUBLIC TELEPHONE BOOTHS AT VARIOUS LOCATIONS ON CITY PROPERTY AND CITY STREETS.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. A revocable permit is hereby granted to the Pacific Northwest Bell Telephone Company, its successors and assigns, to install, maintain, and operate public telephone booths at various locations on city property and city streets in the city of Woodburn on the following terms:

(A) **Location of booths.** Sites for the location or relocation of telephone booths shall be selected by the permittee, subject to the approval of the common council of the city of Woodburn.

(B) **Installation and maintenance**. The permittee shall bear the entire cost of installation, maintenance, relocation, and removal of every telephone booth installed under this permit.

(C) **Commissions**. The permittee shall pay to the City of Woodburn a commission equal to 15 per cent of the net contents of the coin box of each public telephone installed hereunder, after deduction for applicable excise taxes. After this permit becomes effective, such commissions shall be paid to the city semiannually.

(D) **Electricity**. With approval of the common council of the city of Woodburn and Portland General Electric Company, its successors and assigns, the permittee, where feasible, may interconnect with electric service furnished to the city.

(E) **Removal of booth**. Upon 30 days' notice, the city, for cause, may require the permittee to remove or relocate any telephone booth installed hereunder. The permittee on its own initiative may remove any telephone booth any time, but shall restore the surface to good condition and safe for public use, considering the nature and location of the property.

(F) **Termination of permit**. This permit may be revoked by the council, or operations hereunder may be discontinued voluntarily by the permittee, only after 30 days' notice. In event of such termination, the permittee shall remove all installations hereunder within 90 days and in compliance with provisions of subsection (E) hereof.

Section 2. The permit granted by this ordinance is subject to the condition that permittee, its successors and assign, forever will indemnify and save the city of Woodburn, its officers, agents, and employees harmless from and against any and all liability, loss, cost, damage, and expense, and any and all claims for injury or death to persons and damage to property, directly or indirectly arising from the installation, maintenance, or operation of telephone booths under this permit. The city shall

promptly notify the permittee upon receipt of any claim or demand against which it is, or may be, held harmless by the permittee under this indemnification. As evidenced by its written acceptance of the terms and conditions and agrees that the within permit is granted only upon, and constitutes consideration for, this indemnification.

Section 3. This ordinance is not operative until permittee has filed with the city recorder a written acceptance of all terms and conditions contained herein, signed by an authorized official of said corporation, and approved as to form by the city attorney.

Passed by the Council and approved by the Mayor July 21, 1964.

ORDINANCE NO. 1885

AN ORDINANCE ESTABLISHING A CABLE TELEVISION RATE SCHEDULE PURSUANT TO ORDINANCES NO. 1766 AND 1784, AND DECLARING AN EMERGENCY.

[Whereas clause.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. That after the conclusion of a public hearing, having duly considered the information and testimony presented, the Woodburn City Council hereby adopts the rate proposed by the franchisee, Northland Communications Corporation, Inc., as set out in its petition dated June 4, 1984, which is attached hereto as Exhibit "A" and by this reference incorporated herein.*

Section 2. That pursuant to the applicable ordinances this rate change is effective 90 days from the date of said petition.

Section 3. [Amends Section 15 of Ord. No. 1784, Comp. 11-12.]

Section 4. [Emergency clause.]

Passed by the Council and approved by the Mayor August 17, 1984.

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* Exhibit "A" is on file with the original ordinance and is available for inspection at City Hall.

ORDINANCE NO. 2028

AN ORDINANCE IMPOSING A MOTOR VEHICLE FUEL TAX ON MOTOR VEHICLE FUEL DEALERS, PROVIDING FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX, AND IMMEDIATELY REFERRING SAID ORDINANCE TO THE ELECTORS OF THE CITY OF WOODBURN.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Title:** This ordinance shall be known as the "City of Woodburn Motor Vehicle Fuel Tax Ordinance.

Section 2. **Definitions.** As used in this ordinance, unless the context requires otherwise:

(A) "Aircraft Fuel" means any gasoline and other inflammable or combustible gas or liquid by whatever name such as gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the City is for purposed other than the propulsion of aircraft.

(B) "Authorized Agent" any person or agency that has been given authority to implement a portion of this ordinance.

(C) "City" means City of Woodburn, a municipal corporation of the State of Oregon.

(D) "Dealer" means any person who:

(1) Supplies or imports motor vehicle fuel for sale, use or distribution in, and after the same reaches the City, but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City; or

(2) Produces, refines, manufactures or compounds motor vehicle fuels in the City for use, distribution or sale in the City; or

(3) Acquires in the City for sale, use or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

(E) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

(F) "Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(G) "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

(H) "Motor Vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

(I) "Motor Vehicle Fuel" means and includes gasoline, diesel, mogas, methanol, and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas, diesel, mogas, methanol, or liquid, the chief use of which, as determined by the City, is for purposes other than the propulsion of motor vehicles upon the highways. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

(J) "Person" includes every natural person, association, firm, partnership, or corporation.

(K) "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(L) "State" means State of Oregon.

Section 3. **Tax Imposed.** A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Woodburn. The City of Woodburn motor vehicle fuel tax imposed shall be paid monthly to the City or to its authorized agent.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(B) A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City or its authorized agent, upon the sale, use or distribution of the motor vehicle fuel.

Section 4. Amount and Payment.

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the City, in the sale, use or distribution of motor vehicle fuel, shall:

(1) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the City as well as all such fuel sold, used or distributed in the City by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.

(2) Pay a motor vehicle fuel tax computed on the basis of one (1.0) cent per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 20, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

Section 5. Permit Requirements. No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

Section 6. Permit Applications and Issuance.

(A) Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing:

(1) The business name under which the dealer or fuel-handler is transacting business.

(2) The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon.

(3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

(D) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City or its authorized agent, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.

(E) The City Recorder's Office shall keep on file a copy of all applications and/or permits.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

Section 7. <u>Failure to Secure Permit</u>.

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(B) The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.

(C) Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, shall be assessed a penalty of $250.00 unless modified by Section 27, Subsection "a", determined by the City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the City in the amount of the penalty therein stated.

(D) Any tax or penalty so assessed may be collected in the manner prescribed in Section 11 with reference to delinquency in payment of the tax or by Court action.

Section 8. **Revocation of Permit**. The City or its authorized agent shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this Ordinance. The City or its authorized agent shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

Section 9. **Cancellation of Permit.**

(A) The City or its authorized agent may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City or its authorized agent ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City or its authorized agent may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

Section 10. **Remedies Cumulative**. Except as otherwise provided in Sections 11 and 13, the remedies provided in Sections 7, 8, and 9 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

Section 11. **Payment of Tax and Delinquency.**

(A) The motor vehicle fuel tax imposed by Sections 3 and 4 shall be paid on or before the 25th day of each month to the City or its authorized agent which, upon request, shall receipt the dealer or fuel-handler therefor.

(B) Except as provided in subsection (D) of this Section, to any motor vehicle fuel tax not paid as required by subsection (A) of this Section, there shall be added a penalty of one percent (1.0%) of such motor vehicle fuel tax.

(C) Except as provided in subsection (D) of this Section, if the tax and penalty required by subsection (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this Section.

(D) If the City or its authorized agent, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (B) and (C) of this Section may be waived. Penalties imposed by this Section shall not apply when the penalty provided in Section 7 has been assessed and paid.

(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(F) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City or its authorized agent, as required herein.

Section 12. **Monthly Statement of Dealer and Fuel-Handler**. Unless modified by Section 27 Subsection "b" every dealer and fuel-handler in motor vehicle fuel shall render to the City or its authorized agent, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City or its authorized agent, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

Section 13. **Failure to File Monthly Statement**. If any dealer or fuel-handler fails to file the report required by Section 12, the City or its authorized agent, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The City or its authorized agent, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of $50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City or its authorized agent is prima facie evidence of the facts as shown.

Section 14. **Billing Purchasers**. Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City or its authorized agent the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City or its authorized agent are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

Section 15. **Failure to Provide Invoice or Delivery Tag**. No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

Section 16. **Transporting Motor Vehicle Fuel in Bulk**. Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the City with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

Section 17. **Exemption of Export Fuel**.

(A) The license tax imposed by Sections 3 and 4 shall not be imposed on motor vehicle fuel:

(1) Exported from the City by a dealer; or

(2) Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City or its authorized agent in such detail as may be required.

(B) In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the City or its authorized agent an export certificate in such form as shall be prescribed, prepared and furnished by the City or its authorized agent, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City or its authorized agent may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City or its authorized agent may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the City or its authorized agent and the dealer from whom the motor vehicle fuel was originally purchased of his act.

(E) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.

(F) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City or its authorized agent. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

Section 18. **Sales to Armed Forces Exempted.** The motor vehicle fuel tax imposed by Sections 3 and 4 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the City; but every dealer shall be required to report such sales to the City or its authorized agent, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

Section 19. **Fuel in Vehicles Coming Into City Not Taxed**. Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3 and 4, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

Section 20. **Refunds**. Refunds will be made pursuant to ORS. 319.280 to 319.320.

Section 21. **Examination and Investigations**. The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City or its authorized agent pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City or its authorized

agent may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors by its examinations or investigations.

Section 22. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

(A) Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

(B) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

Section 23. Examining Books and Accounts of Carrier Motor Vehicle Fuel. The City or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor
vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this ordinance.

Section 24. Records to be Kept by Dealers and Fuel Handler. Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City or its authorized agent of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City or its authorized officers or agents.

Section 25. Records to be Kept Three Years. Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City or its authorized agent. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or its duly authorized agents for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

Section 26. Use of Tax Revenues.

(A) The City Administrator shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance remaining after providing for the cost of administrating the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, maintenance of public highways, roads and streets within the City of Woodburn.

Section 27. Administration. The City Administrator or his designate is responsible for administering this ordinance. In addition, the City Administrator may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply:

(a) The fuel handler's penalty of Section 7 Subsection "c" shall be reduced to $100.00. And if the Division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 7 and this Subsection may be waived.

(b) The fuel handler's monthly reporting requirements of Section 12 and 13 shall be waived.

Section 28. Separability. If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 29. Voter Referral. This ordinance shall be referred to the electors of the City of Woodburn at the September 19, 1989, special election. A copy of the ballot measure for this referral is attached hereto and by this reference incorporated herein.

Section 30. Emergency Clause for Voter Referral. An emergency is declared to exist in regard to the referral of this matter to the voters and Section 29 of this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Section 31. Effective Date for Remainder of Ordinance. Excepting Section 29 regarding voter referral, the taxation imposed by this ordinance shall commence November 1, 1989, upon approval of a majority of the electors of the City of Woodburn at the special election of September 19, 1989.

Passed by the Council and approved by the Mayor August 14, 1989.

ORDINANCE NO. 2057

AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX AND PROVIDING ADMINISTRATIVE PROCEDURES FOR COLLECTING SAID TAX.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For purposes of this ordinance, the following mean:

(1) Accrual Accounting. A system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

(2) Cash Accounting. A system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

(3) Hotel. A structure, any portion of a structure, or any space that is occupied or intended or designed for transient occupancy for thirty (30) days or less for dwelling, lodging or sleeping purposes; and including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, public or private dormitory, fraternity, sorority, rooming house, public or private club, space in a mobile home or trailer park, space in a recreational vehicle park, or other similar structure if the occupancy is for less than a 30-day period.

(4) Occupancy. The use or possession or right to the use or possession of a room or space in a "hotel" for lodging or sleeping purposes.

(5) Operator. A person who is a proprietor of a hotel in any capacity. When the operator performs his functions through a managing agent of a type or character other than an employee, the managing agent shall also be considered an operator and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance be either the principal or the managing agent shall be considered compliance by both.

(6) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unity.

(7) Rent. The consideration charged for the occupancy of space in a hotel as that term is defined by this Ordinance. (Section 1(7) as amended by Ordinance 2419 dated May 14, 2007.)

(8) Rent Package Plan. The consideration charged for both food and rent when a single rate is made for the total of both. The amount applicable to rent for determination of the transient occupancy tax shall be the same charge made for rent when it is not a part of a package plan.

(9) Tax. The tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(10) Tax Administrator. The Finance Director or designee.

(11) Transient. An individual who exercises occupancy 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. An individual occupying space in a hotel shall be 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. 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.

Section 2. Imposition of Tax. For the privilege of occupancy in a hotel, a transient shall pay a tax in the amount of nine percent (9%) of the rent charged by the operator. The tax constitutes a debt owned by the transient to the City, and the debt is extinguished only when the tax is remitted by the operator to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax into the records when rent is collected if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that the tax be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities other than the furnishing of rooms, accommodations, and parking space in mobile home parks, trailer parks or recreation vehicle parks. (Section 2 as amended by Ordinance 2290 dated June 11, 2001.)

Section 3. Rules for Collection of Tax by Operator.

(1) Every operator renting space for lodging or sleeping, the occupancy of which is not exempted under terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owned by the operator to the City.

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

(3) The tax administrator shall enforce this ordinance and may adopt rules and regulations necessary for enforcement.

(4) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

Section 4. Operator's Duties. An operator shall collect the tax when the rent is collected from the transient. The amount of tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not advertise that the tax will not be added to the rent, that portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this ordinance. The operator shall pay the tax to this city as imposed by this ordinance as provided for in Section 8 of this ordinance.

Section 5. Exemptions. The tax shall not be imposed on:

(1) An occupant staying for more that 30 consecutive days.

(2) A person who rents a private home, vacation cabin or similar facility from an owner who personally rents the facility incidentally to the owner's personal use.

(3) Any occupant who rent is paid for a hospital room or stay in a medical clinic, convalescent home or home for aged people.

(4) Any occupant whose rent is of a value less than $2.00 per day.

(5) Employees, officials or agents of the U.S. Government occupying a hotel in the course of official business. (Section 5(5) as amended by Ordinance 2419 dated May 14, 2007.)

Section 6. Operator's Registration.

(1) An operator of a hotel shall possess a valid business registration in accordance with the requirements of Ordinance 2399.

(2) Failure to register does not relieve the operator from collecting the tax imposed by this ordinance, or a person from paying said tax.

Section 7. Certificate of Authority.

(1) The tax administrator 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 for each additional place of business of each registrant. Certificates are nonassignable and nontransferable and shall be surrendered immediately to the tax administrator on the cessation of business at the location named or on the sale or transfer of the business. Each certificate and duplicate shall state the place of business to which it is applicable and shall be

prominently displayed so as to be seen by all occupants and persons seeking occupancy.

(2) The certificate shall state:

(a) The name of the operator.

(b) The address of the hotel.

(c) The date on which the certificate was issued.

(d) This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the City of Woodburn by registering with the tax administrator for the purpose of collecting from transients the occupancy tax imposed by the City and remitting the tax to the tax administrator. This certificate does not authorize any person 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 Woodburn. This certificate does not constitute a permit. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner.

Section 8. <u>Collections, Returns and Payments</u>.

(1) The tax shall be paid by the transient to the operator at the time that rent is paid. The taxes collected by the operator are due and payable to the tax administrator on a calendar basis on the 15th day of the month for the preceding month and are delinquent on the last day of the month in which they are due.

(2) 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 with the tax administrator. The return shall be filed on a form prescribed by the tax administrator.

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

(4) The operator is entitled to withhold ten percent (10.0%) of the tax due to cover the administrative expense of collecting and remitting the tax. This deduction shall be so noted in the appropriate place on the return form.

(5) The operator shall deliver the return and the tax due the City to the tax administrator's office either by personal delivery or by mail. If the return is by mail, the postmark shall be considered the date of delivery for determining delinquencies.

(6) For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. No further extensions shall be granted except by the Council. An operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed, the tax and interest due are not paid by the end of the extension, the interest shall become part of the tax computation of penalties described in Section 9.

(7) The tax administrator may require returns and payment of the amount of taxes for other than monthly period in individual cases to ensure payment or to facilitate collection by the City.

Section 9. Delinquency Penalty.

(1) An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

(2) An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of 31 days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

(3) If the tax administrator determines that non payment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties state in subsections (1) and (2).

(4) In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of one percent (1.0%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(5) Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

(6) An operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

Section 10. Deficiency Determinations.

(1) In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

(2) Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 9.

(3) In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 9.

Section 11. Redemption Petition. A determination becomes payable immediately on receipt of notice and becomes final within 10 days after the tax administrator has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final.

Section 12. Fraud, Refusal to Collect, Evasion.

(1) If an operator fails or refuses to collect the tax, make the report, or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due.

(2) Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final 10 days after the tax administrator has given notice.

(3) The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

Section 13. Notice of Determination.

(1) The tax administrator shall give the operator a written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

(2) Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the monthly period for which the determination has been made or within three years after the return is filed, whichever is later.

Section 14. Operator Delay If the tax administrator believes that collection of the tax will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made,

the operator may petition for redemption and refund of the determination if the petition is filed within 10 days from the date of service of notice by the tax administrator.

Section 15. Redetermination.

(1) An operator against whom a determination is made under Section 10, or a person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 14. If a petition for redetermination refund is not filed within the time required, the determination is final on expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination and, if the operator requested a hearing in the petition, shall grant the hearing and give the operator 10 days notice of the time and place of the hearing. The tax administrator may continue the hearing if necessary.

(3) The tax administrator may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

(4) The decision of the tax administrator on a petition for redetermination becomes final 10 days after service of notice on the petitioner unless appeal of the decision is filed with the City Council within 10 days after notice is served.

(5) A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

Section 16. Security for Collection of Tax.

(1) The tax administrator may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator, but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns or $5,000, whichever amount is less. The amount of the security may be increased or decreased by the tax administrator, subject to the limitations of this subsection.

(2) Within three years after any amount of the tax becomes due and payable or within three years after any determination becomes final, the tax administrator may bring an 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.

Section 17. Liens

(1) The tax, interest, penalty, and filing fees paid to the tax administrator any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the County Clerk of Marion County, Oregon until the tax is

paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

(2) Notice of the lien shall be issued by the tax administrator when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

(3) Personal property subject to the lien may be sold at public auction after 10 days notice in a newspaper of general circulation in the city.

(4) A lien for the tax, interest and penalty shall be released by the tax administrator when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

Section 18. Refunds by City to Operator. When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years form the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

Section 19. Refunds by City to Transient. If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the tax administrator within three years from the date of payment.

Section 20. Records Required from Operators. Every operator shall keep guest records, accounting books, and records of room rentals for a period of three years and six months.

Section 21. Examination of Records. During normal business hours and after notifying the operator, the tax administrator may examine books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. To assist in this process, the tax administrator may request certified copies of the annual income tax return covering the hotel operator.

Section 22. Confidentiality. The tax administrator or a person having an administrative or clerical duty under the provisions of this ordinance shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official

duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(1) Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this ordinance.

(2) Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the City Attorney shall approve each disclosure, and the tax administrator may refuse to make a disclosure referred to in this subsection when, in the tax administrator's opinion, the public interest would suffer.

(3) Disclosure of names and address of persons making the returns.

(4) Disclosure of general statistics regarding taxes collected or business done in the City.

Section 23. Disposition of Tax Funds. All revenue received from the transient occupancy tax shall be accounted for by a separate revenue line item contained in the General Fund. Sixty-six and two- thirds percent (66 2/3%) of all revenues received from the transient occupancy tax shall be used at the Council's discretion. Thirty-three and one-third percent (33 1 /3%) of all revenues received from the transient occupancy tax shall be dedicated to uses that promote and support tourism and economic development activities. Of the monies set aside for tourism and economic development the Council may, at its discretion, expend some or all of those monies on activities conducted by the City or other agencies that advance the Council's tourism and economic development goals. Monies distributed to agencies and organizations other than the City shall be dispersed pursuant to a tourism and economic development grant program. Policies and procedures governing that program shall be established by City Council resolution. (Section 23 as amended by Ordinance 2444 adopted August 11, 2008.)

Section 24. <u>Appeals to Council</u>. A person aggrieved by a decision of the tax administrator may appeal to the City Council by filing a notice of appeal with the tax administrator within ten days of notice of the decision. The tax administrator shall transmit the notice, together with the file of the appealed matter, to the Council. The Council shall fix a time and place for hearing the appeal and shall give the appellant not less than ten days written notice of the time and place of hearing.

Section 25. <u>Severability</u>. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 26. Violations.

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

(2) Notwithstanding paragraph (1) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed.

Section 27. Civil Infraction. A violation of any provision of this ordinance shall constitute a Class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance No. 1998. Each day of noncompliance with this ordinance shall constitute a separate violation.

Section 28. Effective Date. This ordinance shall be in full force and effect effective June 1, 1991.

Passed by the Council April 8, 1991 and approved by the Mayor April 9, 1991.

ORDINANCE NO. 2507

AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AN ELECTRIC LIGHT AND POWER SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF WOODBURN, FIXING THE TERMS AND CONDITIONS OF SAID FRANCHISE; PROVIDING AN EFFECTIVE DATE; REPEALING ORDINANCE 2328; AND DECLARING AN EMERGENCY.

[Whereas clauses]

Section 1 – Franchise Granted

Portland General Electric Company, an Oregon Corporation (the "Company"), is hereby granted a non-exclusive Franchise to operate an electric light and power system within the corporate limits of the City of Woodburn ("the City"), subject to the terms and conditions of this ordinance,

A. Definitions. As used in this ordinance:

"City" means the City of Woodburn, a municipal corporation of the State of Oregon, and its duly authorized officers, employees, agents or assigns.

"City Recorder" means the duly appointed City Recorder of the City of Woodburn, Oregon.

"Company" means Portland General Electric Company.

"Company facilities" means all poles, wires, fixtures, equipment, underground circuits, conduit, and other property necessary or convenient to the supply of electric energy owned or operated by the Company within the corporate limits of the City.

"Corporate limits of the City of Woodburn" means the City boundary as it now exists or may be amended during the term of this Franchise.

"Franchise to operate an electric light and power system" includes the right and privilege to erect, construct, repair, maintain and operate poles, wires, fixtures, conduit, equipment, underground circuits and other property necessary or convenient to supply the City, its inhabitants and other persons and territory with electric energy for light, power and other purposes, upon, over, along, under and across the streets, alleys, roads and any public right-of-way, property or place.

"Gross revenue" includes any revenue earned by the Company within the City from the sale of electric energy after adjustment for the net write-off of uncollectible accounts computed on the average annual rate for the entire Company, excluding existing sales of electric energy sold by the

Company to any public utility when the public utility purchasing such electric energy is not the ultimate consumer. Gross revenue shall include revenues from the use, rental or lease of the Company's operating facilities of the utility other than residential-type space and water heating equipment under tariffs filed with and approved by the Oregon Public Utility Commission (OPUC). Gross revenue shall not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, revenue from joint pole use, or revenue paid directly by the United States of America or any of its agencies. The meaning of "gross revenue" as used in this ordinance shall be amended and interpreted consistently with regulations prescribed by OPUC for determining the amount of Franchise fees allowed as operating expenses of a utility for ratemaking purposes.

"Person" includes any individual, group of individuals, or legal entity.

"OPUC" means the Oregon Public Utility Commission, and any successor or additional agency empowered by the State of Oregon to regulate public utilities.

"Public project" means any project for work in the right of way that is not undertaken to benefit a specific development or redevelopment project on private property and that is not undertaken to benefit a public utility or service provider other than the City.

"Public right-of-way" includes the public streets, alleys, roads, dedicated rights-of-way, easements, and other public property, way or place within the corporate limits of the City, and further includes that portion of private property upon which a preliminary subdivision or partition plat has been approved by the City for provision of public utilities within the corporate limit of the City, which is expected to be dedicated to the City and over which the City shall have administration, ownership and control.

"Public utility" means any individual, partnership, cooperative, corporation or government agency buying electric energy and distributing such electric energy to other customers or users.

"Public Works Director" means the duly appointed Public Works Director of the City of Woodburn, Oregon.

B. Facilities Subject to Ordinance. All the Company facilities within the City limits shall be deemed to be covered by the terms of this ordinance.

C. Compliance with Laws. The Company shall at all times be subject to all laws, statutes, ordinances, codes, rules, regulations, standards, and procedures regarding Company's facilities, whether Federal, State or local, now in force or which , hereinafter, may be promulgated (including but not limited to zoning, land use, historic preservation ordinances, safety standards, and other application requirements), unless specifically exempted.

Section 2 – Term of Franchise and Effective Date

This ordinance shall become effective July 1, 2013, and shall terminate on June 30, 2023.

Section 3 – Revocation

A. General. In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, under certain circumstances.

B. Conditions of Revocation. The grounds for which the City may declare forfeiture or revoke the Franchise are the following:

1. If the Company is in substantial violation of any material provision of the Franchise agreement and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;

2. The Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;

3. The Company is found by a court of competent jurisdiction to have engaged in fraud or deceit upon the City; or

4. The Company fails to obtain and maintain any right granted by any state regulatory body, required in order to provide electric service to customers within the City or to construct, maintain and operate the system; provided, however, that the Company shall be allowed a reasonable time to cure failure to obtain any permit.

C. Due Process. Upon the occurrence of one of the events set out above, following 30 days written notice to the Company of the occurrence and the proposed forfeiture and an opportunity for the Company be heard, the City may by ordinance declare a forfeiture. In a hearing, the Company shall be afforded due process rights. Findings from the hearing shall be written, and shall stipulate the reasons for the City's decision. In the event the Company believes the City improperly has declared a forfeiture, the Company may file such proceeding as is appropriate in a court of competent jurisdiction.

D. The City reserves the right to cancel this Franchise at any time upon one year's written notice to the Company in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy to customers throughout the City.

Section 4 – Construction to be Approved by City

A. Before the Company may conduct underground work involving excavation, new construction or major relocation work in any public right-of-way, the Company shall first notify the City, furnish appropriate maps and drawings, and provide not less than forty-eight (48) business day hours notice, except in the case of an emergency. The City will not sell or transmit Company maps or data to third parties unless permitted by the Company. The City shall upon request make available to the Company any City prepared maps or data which are a matter of public record, to facilitate permitting or the Company's capital planning. These maps or data shall be made available to the Company upon payment of the applicable public records fees.

B. In the case of an emergency the Company shall file maps and drawings with the Public Works Director showing any construction work done by the Company within the corporate limits of the City, within thirty (30) days after completion of the work.

C. Such construction work shall be done in a reasonably safe manner in accordance with requirements of applicable ordinances, State laws, and rules. In all circumstances pertinent to this Franchise, any actions by the Company's contractors shall be the responsibility of the Company. Any contractor of the Company shall be bound by all terms and conditions of this Franchise.

D. Subject to any constitutional limitations to the City's authority that are applicable, the City shall impose a condition on its land use development approval that the developer either (i) provide a sufficient location in the public right-of-way located in the land use development for Company Facilities that meet the Company's construction standards as provided to the OPUC and NESC requirements, or (ii) provide or obtain an easement for Company Facilities that meets the construction standards as provided to the OPUC and NESC requirements.

Section 5 – Location and Relocation of Company Facilities

A. City Approval Required for Company Installations, Excavations and Restorations. Subject to City approval, the Company may make all necessary excavations in any public right-of-way for the purpose of erecting, locating, installing, constructing, repairing, maintaining, removing and relocating Company facilities. The location of Company facilities in the public right-of-way shall be at places approved by the City. Except in emergencies, the City may require the Company to obtain a permit prior to commencing any work pursuant to this section pursuant to the City's ordinances or regulations. In emergencies, the Company shall take reasonable measures to notify the Public Works Director prior to commencing work.

B. Removal or Relocation – Temporary or Permanent. In accordance with ORS 221.420, the City may require the Company to remove and relocate transmission and distribution facilities maintained by the

Company in any public rights of way, property or place of the City by giving notice to the Company. The Company shall, upon ten (10) days written notice from the City, respond and begin the design process to relocate such facilities. Both parties will, to the greatest possible extent, agree on a relocation plan that provides for a suitable location for both underground and above-ground distribution facilities and aerial transmission facilities. In the event of a disagreement regarding suitable location, the City's determination shall be final subject to state law and regulations including, but not limited to, the National Electrical Safety Code. If the City's determination of a location requires the acquisition of easements or right-of way, the required easements or right-of way from private property owners for such relocated facilities sufficient to maintain service will be obtained by the City. If acquisition of easements or right-of-way is required to satisfy the Company's location requirements, the required easements or rights-of-way will be obtained by the Company from private property owners. The cost of removal or relocation of its facilities for public projects shall be paid by the Company. When the City requires the Company to relocate the same facilities that were previously relocated on another public works project that was completed within the past two years, the cost will be borne by the City. This provision shall apply only to fully completed projects, and shall not apply to phases of the same project and minor relocation work.

C. Overhead to Underground Conversion. As permitted by law, administrative rule, or regulation, and consistent with Ordinance 2416, the City may require the Company to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations. Both parties will, to the greatest possible extent, agree on a relocation plan that provides for a suitable location. In the event of a disagreement regarding suitable location, the City's determination shall be final subject to state law and regulations including, but not limited to, the National Electrical Safety Code. If the City's determination of a location requires the acquisition of easements or right-of way, the required easements or right-of way from private property will be obtained by the City. If acquisition of easements or right-of-way is required to satisfy the Company's location requirements, the required easements or rights-of-way will be obtained by the Company from private property owners. The expense of such a conversion shall be paid by the Company subject to OAR 860-022-0046 and the conversion itself shall be accomplished in the manner described by the rules of the OPUC. The Company shall collect conversion costs in accordance with OPUC rules. Nothing in this paragraph prevents the City and the Company from agreeing to a different form of cost recovery on a case-by-case basis.

D. Notice Required. Except in an emergency, the Company shall provide not less than forty-eight (48) business day hours notice to the Public Works Director prior to any work by the Company which involves excavation in the public right-of-way or relocation of Company facilities. The Company shall exercise all reasonable efforts to provide advance notice of such

work so as not to disrupt City services or any other person using the right-of-way and to enable the City to inspect the work.

E. Company to Minimize Disruptions. Whenever work is performed in any public right-of-way, the Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

F. Restoration Required. When the Company makes any excavation or installation pursuant to this ordinance, the Company or its contractors shall restore the affected public right-of-way to the same condition which it was in prior to the excavation. All work done shall be subject to the reasonable rejection or correction requirements of the Public Works Director and subject to the Public Works Director's approval. If the Company fails to promptly restore the affected portion of the public right-of-way, the City may restore the right-of-way and charge all costs to the Company. If the Company inadequately restores the right-of-way, the City may repair the restored area to correct the defect , using a qualified contractor in accordance with applicable state and federal safety laws and regulations, and charge the cost to the Company, provided that the City gives the Company notice of the defect and ten (10) days opportunity to correct the defect. All excavation and restoration work shall be done in strict compliance with applicable rules, permits issued, regulations, ordinances or orders of the City and other applicable laws and regulations which may be adopted from time to time during the continuance of this Franchise by the City Council or as may otherwise be provided by law.

G. Relocation at Request of or to Accommodate Third Party. In the event that any relocation of Company Facilities is requested by or is to accommodate a third party, Company shall seek reimbursement from the third party consistent with the Company's tariff on file with the OPUC and not from the City. Such relocation shall be consistent with any applicable long-term development plan or projection of the City or approved by the City. If the relocation of Company's Facilities is caused or required by the conditions placed by the City on approval for projects of third parties, such relocation shall in no event fall under the provisions of subsections (B) or (C) of this Section 5.

H. **PUBLIC ROW VACATION.** If all or a portion of the public right-of-way used by Company is vacated by the City during the Term, the City shall either condition the approval of the vacation on the reservation of an easement for Company Facilities in their then-current location that prohibits any use of the vacated property that interferes with Company's full enjoyment and use of its easement, or permit Company Facilities to remain in a public utility easement. If neither of these options is reasonably possible, Company shall, after notice from the City, remove Company Facilities from such vacated public right-of-way. Should Grantee fail to do so, the City may, after providing Company with ninety (90) days prior written notice, the City may complete such work or cause it to be completed by

a qualified contractor in accordance with applicable state and federal safety laws and regulations, and the cost thereof shall be borne by Company. Upon request, the City will cooperate with Company to identify alternative locations within the public right-of-way for Company Facilities if they are not permitted to remain in the vacated area.

Section 6 – Public Facilities and Improvements

A. All Company facilities shall be placed so that they do not interfere with the use by the City or the public of any public right-of-way and in accordance with any requirements adopted by the City Council. Nothing in this ordinance shall be construed to prevent the City from severing, grading, paving, planking, repairing, widening, altering or doing any work that may be desirable on or in any public right-of-way. If possible, all such work shall be done so as not to obstruct, injure or prevent free use and operation of the electric light and power system of the Company.

B. Whenever the City performs or contracts for work in the right-of-way that may disturb but does not require the relocation of Company facilities, the City shall take reasonable measures to notify the Company in advance to enable the Company to take measures to protect its facilities from damage or injury to the public. In such case, the Company shall furnish field marking to the City or contractor showing the approximate location of all of its facilities in the area involved in the construction.

C. If space is available, the Company shall permit the City to run wires on Company poles or conduit for municipal purposes and to attach City alarms and police signals to Company poles, subject to the following conditions:

1. Such wires and signals shall be strung so as not to interfere with the wires of the Company and to conform to the provisions of the National Electrical Safety Code and any other applicable building code. The City shall maintain attachment agreements and submit applications for permits for such attachments;

2. The City shall not lease or sell space on Company poles or conduit to third parties, or in its facilities attached to Company poles or in conduit. The City may provide space in its facilities at no charge to entities using such space for a public purpose as long as such entities' use will cause no additional burden to Company poles or conduit or require any separate attachment on or space in Company poles or conduit ; and

3. To the degree permitted by Oregon Law, the City shall defend, indemnify and hold the Company harmless from loss or damage resulting from damage to persons or property or injury or death to City employees, Company employees, or the public arising from the use of said poles by the City.

D. The Company shall by permit allow the City to attach banners or other civic beautification or information items to poles of the Company subject to the following:

1. The attachments shall not interfere with the wires of the Company and shall conform to the provisions of the National Electric Safety Code and any other applicable Federal, State or PUC regulation. The Company may regulate the location of such attachment or may deny requests for such attachments on a case-by-case basis if the attachment would violate the requirement of this subsection. In addition, all such attachments shall be in accordance with PGE's banners and attachments policy; and

2. To the degree permitted by Oregon Law, the City shall defend, indemnify and hold the Company harmless from loss or damage resulting from damage to persons or property or injury or death to City employees, Company employees, or the public arising from the use of said poles by the City. The City shall maintain general liability insurance in the amount of at least $1,000,000; which shall name the Company as an additional insured, during use of the poles by the City pursuant to sections 6 (c) and (d).

Section 7 – Continuous Service: Safety Standards

A. The Company shall furnish adequate and safe service for the distribution of electrical energy in the City. The Company shall use due diligence to maintain continuous 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by the State. Under no circumstances shall the Company be liable for an interruption or failure of service caused by an act of God, unavoidable accident, or other circumstances beyond the control of the Company.

B. The Company shall comply with all the applicable rules and regulations of the OPUC.

Section 8 – Acceptance of Franchise Fees

The rights and privileges granted by this Franchise are granted upon the conditions herein contained and also upon the following conditions:

A. In consideration of the rights and privileges granted by this Franchise, the Company shall pay to the City a Franchise fee each calendar year during the life of this Franchise of three and one-half (3-1/2) percent of the gross revenue as defined herein for the immediately preceding calendar year. If the Company pays a Franchise fee of more than 3.5% to another municipal corporation or the OPUC permits the Company to pay any municipality a percentage rate of compensation exceeding that provided for herein as an operating expense of the Company, the

Company shall inform the City. The City shall have the right to immediately require and receive the same percentage fee permitted by the OPUC or paid by the Company to another municipal corporation. The payment described in this section is not subject to the property tax limitations contained in the Oregon Constitution and is not a fee on property or on property owners by fact of ownership.

B. In consideration of the agreement of the Company to make such payments, the City agrees that no license, permit fee, tax or charge on the business or occupation of the Company shall be imposed upon the Company by the City during the term of this ordinance, except:

1. This provision shall not exempt the property of the Company from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges which are generally applicable to the Company's real property, use or development as required by the City's ordinances and regulations.

2. Pursuant to Ordinance 2114 the City has imposed a privilege tax on the Company. As permitted by Oregon law, the combined Franchise fee and privilege tax assessed against the Company may not exceed five (5) percent of the Company's gross revenue from within the City as defined in this ordinance.

C. On or before the first day of March of each year during the term of this Franchise, the Company shall file with the City Recorder a statement under oath showing the amount of gross revenue of the Company within the City on the basis outlined in paragraph (B) for the calendar year immediately preceding the year in which the statement is filed. The annual Franchise fee and privilege tax for the year in which the statement is filed shall be computed on the gross revenue so reported. Such Franchise fee and privilege tax shall be payable annually on or before the first day of April. The City Recorder shall issue a receipt for such annual payment, which shall be the full acquittance of the Company for the payment. Any dispute as to the amount of the Company's gross revenue within the meaning of this ordinance shall be resolved by the Public Utility Commission of Oregon after examination of the Company's records. Any difference of payment due the City through error or otherwise shall be payable within fifteen (15) days of written notice of discovery of such error. If the Company fails to pay any part of the annual payment for thirty (30) days after such payment is due pursuant to this ordinance, and after thirty (30) days written notice from the City, the City may either continue this Franchise in force and/or proceed by suit or action to collect said payment or declare a forfeiture of this Franchise because of the failure to make such payment but without waiving the right to collect earned Franchise payments. Any overpayment to the City through error or otherwise shall be offset against the next payment to the City.

D. The City may, consistent with state law and regulations, direct that the Franchise fee and privilege tax, be calculated on volume-based

methodologies as specifically described in ORS 221.655 instead of the gross revenue formula set out in section 8 (B). Notice must be given to the Company in writing, by October 30th of each calendar year for implementation of volume-based methodology beginning January 1st of the following year. The volumetric calculation must remain in effect for an entire calendar year (January 1 to December 31 billings). No notice is necessary if the City chooses to remain on the gross revenue-based calculation.

E. The City reserves the right to cancel this Franchise at any time upon one year's written notice to the Company in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy.

F. The Company shall not unjustly discriminate or grant undue preference to any users of the services provided by the Company pursuant to this Franchise.

Section 9 – Franchise Non-Transferable

A. No Transfer Without Consent. This Franchise may not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person, nor may actual working control of the City be changed, transferred or acquired without the prior written consent of the City, which consent shall not be unreasonably withheld.

B. Notification. The Company shall promptly notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of the Company.

C. Request for Approval. The Company shall make a written request to the City for its approval of a sale or transfer of this Franchise and furnish all information required by law and the City.

D. City Inquiry into Qualifications. In reviewing a request for sale or transfer of this Franchise, the City may inquire into the legal, technical and financial qualifications of the prospective transferee, and the Company shall assist the City in so inquiring. The City may condition said sale or transfer of this Franchise upon reasonable terms and conditions related to the legal, technical, and financial qualifications of the prospective transferee.

E. Filing Evidence of Transfer. Within thirty (30) days of any transfer or sale of this Franchise, if approved or deemed granted by the City, the Company shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the City and the transferee.

F. Approval Not Waiver. The consent or approval of the City to any transfer by the Company shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

G. Exceptions. Notwithstanding anything to the contrary in this section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise to an entity controlling, controlled by or under the same common control as the Company provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Franchise.

Section 10 – Continuity of Service Mandatory

A. As long as the City is included in the service territory allocated to the Company by the Oregon Public Utility Commission ("OPUC") pursuant to ORS 758.400 et seq., the Company shall provide electric service to customers within the corporate limits of the City in accordance with state statutes and regulations.

B. In the event of purchase, lease-purchase, condemnation, acquisition, taking over and holding of plant and equipment, sale, lease or other transfer to any other person, including any other Grantee of an Electric Light and Power System Franchise, the Company shall cooperate with the City and such person or other Grantee to make sure that customers within the corporate limits of the City continue to receive electric service during any period of transition.

Section 11 – Books of Account and Reports

The Company shall keep and maintain accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City pursuant to section 8 of this ordinance. The City may inspect the books of account, including computer retrieval information, at any time during the Company's business hours and audit the books from time to time. The City Council may require periodic reports from the company relating to its operation and revenues within the City.

Section 12 – Audit

A. Audit Notice and Record Access. The City may audit the Company's calculation of Gross Revenues. Within ten (10) business days after receiving a written request from the City, or such other time frame as agreed by both parties, the Company shall furnish the City and any auditor retained by the City: (1) information sufficient to demonstrate that the Company is in compliance with this Franchise; and (2) access to all books, records, maps and other documents maintained by the Company with respect to Company facilities that are necessary for the City to perform such audit. The Company shall provide access to such

information to the City within the City, or the Portland, Oregon metropolitan area, during the Company's regular business hours.

B. Audit Payment. If the City's audit shows that the amounts due to the City are higher than those based on the Company's calculation of Gross Revenue, then the Company shall make a payment for the difference within sixty (60) days after the delivery to the Company of the audit results. In addition to paying any underpayment, the Company shall pay interest at the statutory rate designated in ORS 82.010 as it may be amended from time to time, but not penalties, as specified in this Franchise, from the original due date. In the event the City's audit shows that the Company's calculation of Gross Revenue resulted in an overpayment to the City by five percent (5%) or more in any one year, the Company may deduct such overpayment from the next annual Franchise fee payment, including interest at the statutory rate designated in ORS 82.010, as it may be amended from time to time from the original due date. If the City's audit shows that the amounts due to the City based on the Company's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit, the Company shall reimburse the City for the incremental cost associated with the audit, not to exceed one percent (1%) of the total annual Franchise fee payment for the applicable audit period.

Section 13 – Utility Rates Set by the OPUC

The rates charged by the Company for electric energy shall be as fixed or approved by the OPUC.

Section 14 – Changes in Statutes or Rules

If the State of Oregon or the OPUC amends or adopts a state statute or administrative rule that would affect a material term, condition, right or obligation under this Franchise, either party may reopen Franchise negotiations with regard to such term, condition, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

Section 15 – Indemnification

The Company shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense, including reasonable attorneys fees, arising from damage to property and/or injury or death of persons or any other damage resulting in whole or in part from any wrongful or negligent act or omission of the Company, its agents or employees in exercising the rights, privileges and Franchise hereby granted.

Section 16 – Insurance

The Company shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with the Company's ownership and use of Company facilities and the Public ROW:

A. Commercial General Liability insurance covering all operations by or on behalf of the Company for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability coverage, in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence and in the aggregate.

B. Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than One Million Dollars ($1,000,000.00) per accident.

C. Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits of One Million Dollars ($1,000,000.00). With the exception of Workers' Compensation and Employers Liability coverage, the Company shall name the City as an additional insured on all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is provided to the City. The Company shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.

D. In Lieu of Insurance. In lieu of the insurance policies required by this section 16, the Company shall have the right to self-insure any and all of the coverage outlined hereunder. If the Company elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this section 16 in a form acceptable to the City. The Company shall provide proof of self-insurance to the City before this Franchise takes effect and thereafter upon request by the City.

Section 17 – Franchise Nonexclusive

This Franchise shall not be exclusive and shall not be construed as any limitation on the City to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth.

Section 18 – Rights not to be Construed as Enhancement to Company Property

The City and the Company understand and agree that the privileges granted to the Company by this Franchise in the streets, alleys, roads and other public places of the City are not to operate so as to be an enhancement of the Company's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 19 – Remedies and Penalties not Exclusive

All remedies and penalties under this ordinance, including termination of the Franchise, are cumulative and not exclusive. Failure to enforce shall not be

construed as a waiver of a breach of this Franchise. A specific waiver shall not be construed to be a waiver of a future breach or of any other term or condition of this Franchise.

Section 20 – Severability Clause

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of this Franchise that are not held to be invalid or unconstitutional shall remain in effect until this Franchise is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Franchise, either party may demand that the other party meet to discuss amending the terms of this Franchise to conform to the original intent of the parties. If the parties are unable to agree on a revised Franchise agreement within ninety (90) days after a portion of this Franchise is found to be invalid or unconstitutional, either party may terminate this Franchise by delivering one hundred and eighty (180) days notice to the other party.

Section 21 – Acceptance

Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, the Company shall file with the City Recorder its written unconditional acceptance or rejection of this Franchise. If the Company files a rejection, this Franchise shall be null and void. If the Company fails to file a written unconditional acceptance or rejection of this Franchise, the City may withdraw this Franchise at any time prior to 30 days from the effective date of the ordinance.

Section 22 – Notice

Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express or UPS), or (4) sent by facsimile transmission with verification of receipt, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:

270 Montgomery Street,

Woodburn, Oregon 97071

FAX # (503) 982-5243

With a copy to: Woodburn City Attorney

270 Montgomery Street,

Woodburn OR 97071

FAX # (503) 982-5243

If to the Company: Government Affairs

Portland General Electric Company

121 SW Salmon St, 1WTC03

Portland, Oregon 97204

FAX: (503) 464-2354

With a copy to: Portland General Electric Company

Attn: General Counsel

One World Trade Center, 17th Floor

121 SW Salmon Street

Portland, Oregon 97204

FAX: (503) 464-2200

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail, one (1) business day after shipment by commercial air courier or the same day as confirmed facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

Section 23– Prior Ordinance Repealed

Ordinance 2328 is repealed-upon acceptance by the Company of this Franchise and all rights and obligations arising under Ordinance 2328 , shall terminate.

Section 24– Emergency Clause

Passed by the Council June 10, 2013 and approved by the Mayor June 12, 2013.

ORDINANCE NO. 2114

AN ORDINANCE IMPOSING A PRIVILEGE TAX ON PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, IN THE AMOUNT OF 1.5 PERCENT OF DEFINED GROSS REVENUES, REGULATING USE OF THE REVENUES THEREBY DERIVED, DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Privilege Tax Imposed.** There is hereby imposed a privilege tax on the gross revenues of Portland General Electric Company, an Oregon corporation, in the amount of 1½% (one and one-half percent) of those revenues. As used herein, "gross revenues" means revenues received by Company from the sale of electric energy within the city, less net uncollectibles. Gross revenue shall include revenues from the use, rental or lease of operating facilities of the Company other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale prices by one public utility to another when the utility purchasing the service is not the ultimate consumer, or revenue from joint pole use.

The privilege tax provided in this ordinance is in addition to the franchise fee being paid by the Company pursuant to Ordinance No. 2109, which grants to PGE a non-exclusive franchise within the city. That ordinance remains in full force and effect.

Section 2. **Payment Dates.** The tax provided in this ordinance shall be paid annually and shall be due for each calendar year or fraction thereof, on or before the first day of April following the end of the calendar year for which the tax is due; with the first payment, for gross revenues collected during 1994, due on or before April 1, 1995.

Section 3. **Interest on Late Payments**. In the event PGE fails to pay the tax on or before the due date, interest shall be owed on the tax from the due date to the date on which payment is received by the city, compounded daily.

Section 4. **Use of Proceeds.** The proceeds derived from this ordinance shall be dedicated to funding of transportation improvement projects identified in the Woodburn Capital Improvement Program, street maintenance and street lighting. (Amended by Ordinance 2532)

Section 5. **Emergency Clause and Effective Date**. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on January 1, 1994, and shall remain in effect until modified or rescinded by ordinance of the City Council.

Passed by the Council December 13, 1993 and approved by the Mayor December 16, 1993.

ORDINANCE NO. 2118

AN ORDINANCE PROVIDING FOR THE REGULATION OF BASIC SERVICE TIER RATES AND RELATED EQUIPMENT, INSTALLATION AND SERVICE CHARGES OF ANY CABLE TELEVISION SYSTEM OPERATING IN THE CITY OF WOODBURN AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City shall follow the FCC Rate Regulations in its regulation of the Basic Service Rates and Charges of the Company and any other cable television system operating in the City, notwithstanding any different or inconsistent provisions in the Franchise; and

Section 2. In connection with such regulation, the City shall ensure a reasonable opportunity for consideration of the views of interested parties; and

Section 3. The City Administrator is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the City to regulate Basic Service Rates and Charges.

Section 4. This ordinance being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council February 28, 1994 and approved by the Mayor March 1, 1994.

ORDINANCE NO. 2145

AN ORDINANCE IMPOSING A PRIVILEGE TAX ON NORTHWEST NATURAL GAS COMPANY, AN OREGON CORPORATION, IN THE AMOUNT OF 2.0 PERCENT OF DEFINED GROSS REVENUES, REGULATING USE OF THE REVENUES THEREBY DERIVED, DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. **Privilege Tax Imposed.** There is hereby imposed a privilege tax on the gross revenues of Northwest Natural Gas Company, an Oregon corporation, in the amount of 2% (two percent) of those revenues. "Gross revenue" as used in this ordinance shall be deemed to include any revenue earned within the City from the sale of natural gas after deducting from the total billings of the Grantee the total net writeoff of uncollectible accounts. Gross revenues shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

The privilege tax provided in this ordinance is in addition to the franchise fee being paid by the Company pursuant to Ordinance No. 2133, which grants to Company a non-exclusive franchise within the city. That ordinance remains in full force and effect.

Section 2. **Payment Dates.** The tax provided in this ordinance shall be paid quarterly and shall be due for each calendar quarter or fraction thereof, on or before thirty (30) days following the end of the calendar quarter, or fraction thereof, for which the tax is due; with the first payment, for gross revenues collected during that portion of the 3rd quarter of 1995 in which this ordinance is in effect, due on or before October 1, 1995.

Section 3. **Interest on Late Payments**. In the event Company fails to pay the tax on or before the due date, interest shall be owed on the tax from the due date to the date on which payment is received by the city, compounded daily.

Section 4. **Use of Proceeds.** The proceeds derived from this ordinance shall be dedicated to funding of transportation improvement projects identified in the Woodburn Capital Improvement Program, street maintenance and street lighting. (Amended by Ordinance 2532)

Section 5. Emergency Clause and Effective Date. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on June 18, 1995, and shall remain in effect until modified or rescinded by ordinance of the City Council.

Passed by the Council May 22, 1995 and approved by the Mayor May 23, 1995.

ORDINANCE NO. 2177

AN ORDINANCE GRANTING TO U S WEST COMMUNICATIONS, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICATION BUSINESS AND TO OPERATE WITHIN THE CITY OF WOODBURN, REPEALING ORDINANCE NOS. 1934, 2041 AND 2163 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. There is hereby granted by the City of Woodburn to U S West Communications, Incorporated, its successors and assigns, the right and privilege to do a general communication business within said City of Woodburn and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the said City, poles, wires and other appliances and conductors for all telephone and other communications purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, it successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same.

Section 2. It shall be lawful for said Grantee, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Woodburn.

Except in an emergency, Grantee shall not excavate in the rights-of-way without first obtaining a City "Right-of-Way Improvement" permit. Grantee will ensure that all requirements are met as the contractor for the work. In emergency situations, Grantee may make initial contact by telephone, but a permit must be obtained as soon as possible.

Section 3. Whenever Grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so the City of Woodburn shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs and restoration being made by the Grantee, its successors and assigns, the said City shall cause the repairs to be made at the expense of the Grantee, its successors and assigns.

Section 4. Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City of Woodburn from sewering, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City of Woodburn in

or upon which the poles, wires or conductors of the Grantee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus. Grantee shall relocate or remove such facilities when in conflict with City work at no cost to the City. However, the costs of relocating or removing Grantee's facilities for the convenience of or at the request of a private developer or development shall be borne by such private developer or development. The City shall not require Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Grantee's right to access available grant funding. In the event of major improvement projects the City may direct that all aerial transmission and distribution facilities be placed jointly underground. Payment for such work shall be in accordance with applicable Oregon Revised Statutes and Administrative Rules.

Section 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, the Grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Said notice shall bear the approval of the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the Grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the Company harmless of and from any and all damages of claims whatsoever kind or nature, caused directly or indirectly from such temporary rearrangement of the facilities of the Grantee, and if required by the Grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the Grantee.

Section 6. In consideration of the rights, privileges, and franchise hereby granted, said Grantee, U S WEST Communications, Incorporated, its successors and assigns, shall pay to the City of Woodburn from and after the date of the acceptance of this franchise, and until its expiration, quarterly, seven percent (7%) per annum of its gross revenues derived from exchange access services as defined in ORS 401.710 within the corporate limits of the City of Woodburn less net uncollectibles. Payment shall be made quarterly, on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. Such payment made by the Grantee will be accepted by the City of Woodburn from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Woodburn upon the Grantee during the term of this franchise.

Section 7. The rights, privileges and franchise herein granted shall continue and be in force for the period of ten (10) years from and after the date this Ordinance becomes effective, except that it is understood and agreed that either party may terminate this Agreement after 180 days notice in writing. This Ordinance shall be subject to any and all State and Federal legislative enactments.

Section 8. The right to use and occupy said streets, alleys, avenues, thoroughfares and public highways, places and grounds within the said City for the purposes set forth herein shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, avenues, thoroughfares and public highways, places and grounds to any person at any time during the period of this franchise.

Section 9. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from damages, costs and expense arising from any injury to persons or property by reason of the negligent act or omission of Grantee, its agents or employees in exercising the rights and privileges herein granted. Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of City streets and sidewalks.

Section 10. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor. Grantee shall, within thirty (30) days of the passage and approval of this Ordinance, file with the Recorder of the City of Woodburn its written acceptance of all the terms and conditions of the Ordinance. If such written acceptance is not performed within said thirty (30) days, this ordinance shall become null and void.

Section 11. Ordinance Nos. 1934, 2041 and 2163 are hereby repealed.

Passed by the Council September 9, 1996 and approved by the Mayor September 10, 1996.

ORDINANCE NO. 2211

AN ORDINANCE APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT OF A CABLE TV FRANCHISE FROM NORTHLAND CABLE TELEVISION, INC. TO NORTH WILLAMETTE TELECOM, INC. AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City hereby approves and consents to the transfer and assignment of the Franchise from Seller to North Willamette.

Section 2. The City hereby approves the encumbrance of the Franchise and the assets of the cable television system, and the assignment of same for security purposes, in connection with the acquisition and operation of the system and the financing and refinancing, from time to time, of the business operations of North Willamette.

Section 3. The assignment and transfer of the Franchise shall not alter the terms and conditions of the Franchise granted in Ordinance 2093; and North Willamette shall file with the City Recorder a written unconditional assumption and acceptance of the Franchise.

Section 4. In addition to the document required by Section 3, North Willamette shall file with the City Recorder a written assurance that:

(A) It shall maintain a system headend in the incorporated City limits of Woodburn during the term of the Franchise.

(B) It shall maintain an office and studio located in the incorporated City limits during the term of the Franchise.

Section 5. In connection with the assignment and transfer of the Franchise to North Willamette, the City certifies to Seller and North Willamette that:

(A) The Franchise was duly and validly issued by the City.

(B) The Franchise is in full force and effect as of the date hereof, is valid and enforceable in accordance with its terms and will not expire until October 19, 2002.

(C) No event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date of this Ordinance.

(D) All fees owing to the City pursuant to the Franchise have been paid through December 31, 1997.

(E) The City acknowledges receipt of a completed FCC Form 394 from Seller and North Willamette.

Section 6. Ordinance Nos. 1766, 2093 and this Ordinance were and are adopted in accordance with the notice and procedure requirements of the laws of the State of Oregon governing cities, and with the notice and procedure requirements prescribed by the City. Ordinance Nos. 1766, 2093 and this ordinance were and are adopted in accordance with and do not conflict with the laws, ordinance, resolutions and other regulations of the City, as presently in effect or as the same were in effect at the time the particular action was taken.

Section 7. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council April 13, 1998 and approved by the Mayor April 15, 1998.

ORDINANCE NO. 2501

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO DATAVISION COMMUNICATIONS, LLC TO OCCUPY CERTAIN RIGHTS-OF-WAY WITHIN THE CITY OF WOODBURN AND DECLARING AN EMERGENCY

[Whereas clauses.]

Section 1. Franchise Grant.

A. Subject to the terms and conditions contained herein, the City of Woodburn does hereby grant to DataVision Communications, LLC ("the Franchisee") a telecommunications franchise ("the Franchise") to locate its facilities within the rights-of-way of the City.

B. Such grant is subject to all of the laws and ordinances of the City of Woodburn and the State of Oregon.

C. The scope of this grant allows the installation of facilities by the Franchisee in the City's rights-of-way. Such facilities shall be used by the Franchisee to provide telecommunications services consistent with the authority granted by the FCC. In the event either the location of the Franchisee's facilities or the nature of the services provided is proposed for modification, the Franchisee shall be required to obtain an additional or revised franchise from the City.

Section 2. Construction Standards.

A. The construction standards of the City of Woodburn, as well as any other applicable construction standards in existence at the time of the Franchise or hereafter enacted, shall apply to all work performed by the Franchisee in City rights-of-way.

B. The Franchisee's facilities shall not interfere in any way with any of the City's communications or other public and city-permitted facilities, including other franchised facilities, either as installed or during operation. The Franchisee will compensate the provider of power directly for the cost of power consumed in support of the Franchisee's facilities, and shall hold the City completely harmless from any power cost.

C. The Franchisee shall locate below the surface of the ground all wiring and physical improvements within City rights-of-way, unless it is physically impossible to do so. Placement of any improvements above ground, or on poles shall only be with the prior review and approval of the City.

D. Where permission is granted by the City to locate the Franchisee's facilities upon poles, the Franchisee shall independently obtain prior written approval from the owner and/or operator of the poles on which its facilities shall be placed. Upon request, the Franchisee shall provide copies of such written approvals for City review.

E. Where permission is granted by the City to locate the Franchisee's facilities upon poles, the Franchisee shall undertake all wiring and physical improvements required by the owner of each pole to which its facilities are to be attached. In the

case of City-owned poles or fixtures, such work shall be performed subject to the approval of the City Engineer or his designee.

Section 3. **Franchise Fee.** The franchise fee payable to the City shall be 7% (seven percent) of the Franchisee's gross revenues earned within the corporate limits of the City. In the event no revenues are earned, but the Franchisee is actually occupying City rights-of-way, the Franchisee shall pay a minimum annual franchise fee of $1,000. Franchise fees shall be payable quarterly, on or before April 30, July 31, October 31 and January 31, for the preceding calendar quarter. Such payment made by the Franchisee will be accepted by the City from the Franchisee, as also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City upon the Franchisee during the term of the Franchise. Payments made more than ten calendar days beyond the due date shall bear interest at the rate of 9% per annum.

Section 4. **Term.** The term of the Franchise shall be five (5) years. The Franchise shall be subject to one automatic renewal on the same terms and conditions for an additional period of five (5) years unless notice is given by either party 180 days in advance of the expiration of the Franchise of its intention to terminate or renegotiate the Franchise.

Section 5. **Acceptance.** The grant of Franchise herein is conditioned upon the Franchisee's acceptance of all terms and conditions hereof in writing in a form acceptable to the City.

Section 6. [Emergency clause.]

Adopted by the Council and Mayor March 25, 2013

ORDINANCE NO. 2299

AN ORDINANCE APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT OF A CABLE TELEVISION FRANCHISE FROM NORTH WILLAMETTE TELECOM, INC. (DIRECT LINK) TO WILLAMETTE BROADBAND LLC, AND DECLARING AN EMERGENCY,

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City hereby approves and consents to the transfer and assignment of the Franchise from North Willamette Telecom, Inc. to Willamette Broadband, LLC contingent upon Willamette's satisfactory completion of the following conditions no later January 2, 2002.

(A) Complete the franchise renewal negotiations, represented in a mutually agreeable new franchise designed to meet current Woodburn regulatory requirements and community needs;

(B) Post a performance bond, to cover all franchise performance by Willamette, in an amount of $300,000. Said bond shall be in a form acceptable to the City Attorney;

(C) Establish a security fund or letter of credit running to the City in the amount of $25,000. Such security fund or letter of credit shall be in a form acceptable to the City Attorney, and shall be retained by the City for a period of five years, or until such time as the City Council deems, based upon Willamette's performance under a franchise, that such security is no longer necessary; and

(D) Agree in writing to remedy any historical violation or default under the Franchise, regardless of whether the Seller or Willamette is responsible for the violation or default.

If Willamette fails to complete any of the conditions (A) to (D) above by January 2, 2002, consent to the sale and transfer of the Franchise is denied. (Section 1 as amended by Ordinance No. 2306 dated November 26, 2001)

Section 2. Subject to condition (A) to (D) above being met by January 2, 2002, and from and after the closing of the sale of the Franchise and related assets to Willamette, Willamette shall become the operator of the Franchise and shall be bound by the lawful obligations and duties that arise on and after the closing with respect thereto and the Seller shall be released of such obligations and duties. (Section 2 as amended by Ordinance No. 2306 dated November 26, 2001)

Section 3. The assignment and transfer of the Franchise shall not alter the terms and conditions of the Franchise granted in Ordinance 2093; and Willamette shall file with the City Recorder a written unconditional assumption and acceptance of the Franchise.

Section 4. In addition to the document required by Section 3, Willamette shall file with the City Recorder a written assurance that, for the remainder of the effective period of Ordinance 2093:

(A) It shall maintain a system head end in the incorporated City Limits of Woodburn; and

(B) It shall maintain an office and studio located in the incorporated City limits during the term of the Franchise; and

(C) The City acknowledges receipt of a completed FCC Form 394 from Seller and Willamette.

Section 6. [Emergency clause.]

Passed by the Council and approved by the Mayor August 30, 2001. Amended by Ordinance 2306 dated November 26, 2001.

ORDINANCE NO. 2494

AN ORDINANCE GRANTING WOODBURN AMBULANCE SERVICE, INC., A NON-EXCLUSIVE FRANCHISE TO OPERATE AN AMBULANCE SERVICE IN THE CITY OF WOODBURN; DEFINING TERMS AND CONDITIONS OF SAID FRANCHISE; REPEALING ORDINANCE 2324; DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE

[Whereas clauses.]

Section 1. Title. This ordinance shall be known as the "Ambulance Service Franchise Ordinance".

Section 2. Policy and Purpose. The Council declares it to be in the public's interest of health, safety and welfare to provide for and regulate ambulance services within the City of Woodburn to:

(1) Ensure effective and efficient emergency ambulance service to the residents of Woodburn; and

(2) Comply with the provisions of the Marion County Ambulance Service Area (ASA) Plan.

Pursuant to ORS 682.031, this ordinance shall not be interpreted to require less than is required of Grantee by the applicable Oregon Revised Statutes and administrative rules. Any inconsistency between the provisions of this ordinance and Oregon state law shall be governed by Oregon state law.

Section 3. Definitions. The words and phrases used in this ordinance shall have the meaning provided in ORS Chapter 682 unless specifically defined herein to have a different meaning. Other specific definitions include:

(1) "ASA Plan" - The Marion County Ambulance Service Area Plan.

(2) "City" - The City of Woodburn

(3) "Franchise" - A privilege granted by the City pursuant to this ordinance.

(4) "Grantee" - The person granted a franchise pursuant to this ordinance.

Section 4. Franchise Granted. The City hereby grants unto Woodburn Ambulance Service, Inc. the franchise, right and privilege, subject to such modifications as are hereinafter set forth, to operate an ambulance service within the corporate limits of the City of Woodburn, as such limits now exist or may hereafter be expanded.

For the purpose of the franchise, Grantee shall have the right to use the public streets, alleys, public ways and places of the City to provide emergency transportation of persons suffering from illness, injury or disability. This Franchise is not exclusive, and the City reserves the right to grant a similar use of public streets, alleys, public ways and

places to any other person at any time during the period of this Franchise, provided said person complies with the regulations of the ASA Plan and with Oregon state law.

Section 5. Franchise Term. The rights, privilege and Franchise herein granted shall be valid for a period of ten (10) years following the effective date, or until expiration of any franchise or designation of service area granted pursuant to the ASA Plan, whichever occurs first. If the ten year period described herein occurs first, the term of this franchise may be extended, by ordinance, to a subsequent date coinciding with the expiration of any franchise granted pursuant to the ASA Plan, provided that a finding is made by the City that Grantee has fully complied with the terms and provisions of this Franchise and remains in good standing in respect to any such franchise granted pursuant to the ASA Plan.

Section 6. Rates and Charges. Grantee shall furnish ambulance service within the corporate limits of the City of Woodburn as requested and required in a prompt, efficient and effective manner; and in accordance with rates and charges made to persons receiving ambulance service as set forth by Council Resolution 1985. In determining the appropriate rates to be charged by Grantee, the City Council shall consider, but not be limited to:

(1) The current and projected cost of providing such service;

(2) The impacts of operating and capital needs, regulatory compliance, and technological change;

(3) The investment and rate of return required of, or earned by, the Grantee;

(4) The rates charged in other cities for similar service;

(5) The public interest in assuring reasonable rates to enable the Grantee to provide effective and efficient services.

Section 7. Compliance with Laws, Rules and Regulations. Grantee shall at all times comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof, and the City of Woodburn, having jurisdiction over the operation of ambulance services.

Section 8. Performance Bond. Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a performance bond running to City, with good and sufficient surety approved by City, in the penal sum of $50,000, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Franchise. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days prior written notice first being given to City. The bond shall be reviewed and approved as to form by the City Attorney.

Section 9. Revision of Rates and Fees. The rates provided in Section 6 hereof, may be changed and revised, either upward or downward, after public notice and

hearing before the City Council. Grantee is permitted to request a rate review and possible increases in rates annually, but the decision to grant or deny any changes in rates shall be made by the City Council only after all other provisions of this Ordinance pertaining to rates and charges have been met.

Section 10. Franchise Fee. For the privilege of the Franchise herein granted, and as compensation for use of the City's streets and rights of way, the Grantee shall pay to the City, through its Finance Director, a quarterly Franchise Fee based on the Franchisee's gross revenue derived from calls for service within the City of Woodburn's city limits for the calendar year ended the previous December 31. The quarterly Franchise Fee will be calculated as one percent (1.0%) of the Franchisee's gross revenue earned in Woodburn divided by four (4).

The Franchise Fee shall be due and payable no later than thirty (30) days following the end of each calendar quarter. The first such payment, for the fourth calendar quarter of 2012, shall be due and payable no later than January 30, 2013, with subsequent payments under this section due and payable no later than thirty (30) days following the end of each succeeding calendar quarter.

To facilitate the City's ability to properly monitor this Franchise, Grantee shall furnish to the City's Finance Director, no later than May 31st of each year, a detailed annual statement, signed by a Certified Public Accountant, outlining the nature of Grantee's revenues and expenditures during the preceding calendar year. If requested in writing by the City, the Grantee shall, upon provision of reasonable advance notice, permit the City's Finance Director, or designee, to examine the books of the Grantee. The City shall further have the right to audit Grantee's records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

Section 11. Ambulance and Equipment Required. All patient transporting vehicles in the City of Woodburn shall conform to the State of Oregon requirements of ORS Chapter 682 and be licensed for an Advanced Life Support (ALS) unit as defined by The Oregon Administrative Rules. All ALS and BLS vehicles shall maintain the minimum equipment prescribed by state law, and as may be further required under the ASA Plan. Grantee shall provide a minimum of two (2) operable and properly equipped ALS Units at all times.

Section 12. Emergency Radio Communications. Grantee shall equip all vehicles and comply with all emergency radio communications requirements of the ASA Plan or of the Intergovernmental Agreement creating the NORCOM emergency communications agency.

Section 13. Levels of Care. All ambulances answering 9-1-1 emergency calls originating in the City of Woodburn shall be ALS Level, with minimum staffing of one EMT-Paramedic and one EMT-Basic. Staffing shall further conform to the requirements of state law.

Section 14. Insurance. Grantee shall maintain in full force and effect at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of $1,000,000 combined with a single limit for bodily injury, and property damage. Grantee shall provide to the Finance Director a Certificate of

Insurance designating the City of Woodburn as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City.

Section 15. Business Hours. Grantee shall make available said ambulance services within the City 24 hours per day, seven days per week; and shall maintain a business office with reasonable office hours, open to the public at least five days per week, excluding holidays, within the corporate limits of the City of Woodburn.

Section 16. Record of Transport Calls. Grantee shall keep for five years a written record of all transport calls received or made, setting forth the date, time, destination, nature of call, name and address of the patient so far as can be ascertained, the hospital or place to which the patient was taken, the names of all ambulance attendants for that particular call, along with the amounts of charges billed or collected from any such transport or service.

Section 17. Alternative Ambulance Service. The Woodburn Fire District, NORCOM, or any other public safety officer may call an ambulance service other than the Grantee if Grantee's ambulances are otherwise in use and unavailable.

Section 18. Transfer of Franchise. Grantee shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in this Franchise, nor the controlling company of Grantee, without prior approval by the City expressed by resolution of its City Council.

Section 19. Indemnity and Hold Harmless. Grantee shall defend, indemnify, and hold the City of Woodburn, its officers, agents and employees, harmless against all liability, loss or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission or an act sustained in connection with the performance of Grantee under its Franchise.

Section 20. Interruption of Service. Notwithstanding any requirements contained in the ASA Plan, in the event the City finds that failure or threatened failure of ambulance service would adversely impact the health, safety or welfare of the residents of this city, the City Council may, after a minimum of 24 hours notice to the Grantee, hold a public hearing and authorize another Franchisee or other person to provide ambulance service, whether it be on an interim emergency or longer term basis. As a condition to this Franchise, the Grantee agrees that any real property, facilities or equipment, which is the property of Grantee, may be used by the City to provide ambulance services during said situation, as determined by the findings of the City Council at the above-mentioned public hearing. The City shall return any such property of the Grantee upon abatement of the situation which prompted City use of such property.

In the event the City's power and authority under this section is exercised, the usual charges for service shall prevail and Grantee shall be entitled to collect for such usual services, but shall reimburse the provider of such ambulance services for its actual costs, as determined by the City. In no event shall the City collect more in reimbursement than could have been charged by Grantee for the provision of such services. In the event that the City and Grantee are unable to agree to reasonable and proper

compensation for reimbursement for such services to the City in such situation, then each party shall name an arbitrator within ten (10) days of notice thereof, and such arbitrators shall, within five (5) days thereafter, name a third arbitrator, and the award or decision of such arbitrators as to the aforesaid matters shall be deemed conclusive upon the parties hereto as to any such matters in dispute. In the event that either party hereto, or the arbitrators chosen, shall fail or neglect to comply with the terms of this arbitration agreement, then the same shall be carried into effect in the manner and as provided by ORS 36.600 through 36.740.

Section 21. Termination of Franchise. This Franchise may be canceled or revoked by the City in the event that Grantee shall fail to abide by the terms, conditions, and obligations set forth and imposed upon it herein, but such cancellation or revocation shall not be made until after thirty (30) days' written notice is given to Grantee. Grantee shall be afforded a hearing, before the City Council, provided such hearing is requested in writing before the expiration of the 30 days. Grantee shall also have the privilege of terminating this Franchise in case the City of Woodburn shall not abide by its terms, on the same terms and conditions described above, upon satisfactory demonstration to the City Council that the City has not so abided.

Section 22. Remedies Not Exclusive. All remedies under this Ordinance, including termination of the Franchise, are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance, including termination of the Franchise, are not exclusive and the City reserves the right to enforce penal provision of any ordinance and also use any remedy available at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver or a breach of any other term, condition or obligation of this ordinance.

Section 23. Evaluation of Service. Grantee shall meet with the City Administrator and other City officials and staff annually or semi-annually, as requested by the City Administrator, to evaluate the service rendered under this Franchise or review any concern as may be existing with the ambulance service.

Section 24. Severability. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section 25. Repeal of Existing Ordinances. Ordinance 2324 is hereby repealed on the effective date of this ordinance.

Section 26. Acceptance. Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise in the form attached hereto as Exhibit "A", and if Grantee fails to do so, this ordinance shall be void.

Section 27. [Emergency clause and effective date.]

Passed by the Council September 24, 2012 and approved by the Mayor September 26, 2012.

ORDINANCE NO: 2524

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE; PROVIDING AN EFFECTIVE DATE; REPEALING ORDINANCE 2376; AND DECLARING AN EMERGENCY

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions and Explanations.

(1) As used in this Ordinance.

(a) "City" means the City of Woodburn and the areas within its boundaries, including its boundaries as extended in the future.

(b) "Council" means the legislative body of the City.

(c) "Grantee" means the corporation referred to in Section 2 of this ordinance.

(d) "Gas" means natural methane-based gas.

(e) "Gas Facilities" means Grantee's Gas transmission and distribution facilities, including pipes, pipe lines, mains, laterals, conduits, feeders, regulators, reducing and regulating stations, meters, fixtures, connections and all attachments, appurtenances, and all accessories necessary and incidental thereto located within the City limits, whether the facilities are located above or below ground.

(f) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.

(g) "Public Place" means any City-owned property within the City that is open to the public that is not a Right-of-Way, including public squares and parks.

(h) "Qualified Contractor" means a Person that is knowledgeable about the construction and operation of a natural gas transmission and distribution system, and must be subject to and comply with the qualifying standards as it relates to the work in question, set forth in 49 CFR Part 192, Subpart N – Qualification of Pipeline Personnel. Additionally, this Person must adhere to all applicable requirements of NW Naturals Quality Assurance program and Contractor Management group.

(i) "Right-of-Way " means the space in, upon, above, or under the public, streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Grantee to use.

(2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2. Rights Granted.

(1) Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

(a) Construct, maintain and operate a natural gas utility system within the City;

(b) Install, maintain and operate gas facilities on, in and under the Right-of-Way of the City, residents, agencies and businesses in the City and to territory beyond the limits of the City; and

(c) Transmit, distribute and sell gas within the City and to territory beyond the limits of the City.

(2) The rights granted herein shall not confer on Grantee any right, title or interest in any public way beyond that expressly conferred by the provisions of this Section 2, nor shall it confer any right or privilege to use or occupy any other property of the City or any other entity.

Section 3. Use of Rights-of-Way by Grantee.

(1) Before the Grantee may use or occupy any Right-of-Way, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City may impose on such use or occupation.

(2) The compensation paid by Grantee for this franchise includes all compensation for the use of Right-of-Way located within the City as authorized. The City may charge additional compensation for the use of any public place.

Section 4. Duration.

This franchise is granted for a period of 10 years from and after the effective date of this ordinance.

Section 5. Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

(1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.

(2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6. Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

(1) Construct, install, maintain and operate any public improvement, work or facility in, on or over the Right-of-Way.

(2) Do any work that the City may find desirable on, over or under any Right-of-Way.

(3) Vacate, alter or close any street. Whenever the City shall vacate any Right-of-Way or Public Place for the convenience or benefit of any person or governmental agency or instrumentality, Grantee's rights under this franchise shall be preserved as to any of its Gas Facilities then existing in the Right-of-Way or Public Place if reasonably practicable. To the extent Grantee's rights in the Right-of-Way cannot be preserved in any street vacation, City shall where reasonably practicable provide an alternative Right-of-Way for the location of Grantee's Gas Facilities. If Grantee's Gas Facilities must be relocated from a vacated Right-of-Way, the petitioners of such vacation shall bear the costs of relocating the Gas Facilities. Upon receipt of a notice of a petition for vacation, Grantee shall as soon as practicable investigate and advise the City and petitioners in writing whether the Gas Facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.

(4) Whenever the City shall perform, cause or permit any work in any present or future Right-of-Way of the City on its behalf, where such work may disturb Grantee's Gas Facilities, the City shall, or require its permittee to, notify Grantee in writing, sufficiently in advance of such contemplated work to enable Grantee to take such measures, as Grantee may deem necessary to protect such facilities, at its own expense.

Section 7. Continuous Service.

Grantee shall maintain and operate an adequate system for the distribution of gas in the City. Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of Grantee through no fault of its own.

Section 8. Safety Standards and Work Specifications.

(1) The Gas Facilities of Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9. Control of Construction.

(1) Before commencing any construction, extension or relocation of facilities in a City Right-of-Way, Grantee shall file with the City drawings, in such form as may be acceptable to the City Engineer, showing the location of existing facilities and facilities to be constructed, maintained, or relocated and shall obtain from the City approval of the location and plans prior to commencement of the work.

(2) All work done within a City Right-of-Way shall be done in the location approved by the City Engineer and in accordance with plans and specifications approved by the City Engineer. The City Engineer's approval of the plans and specifications may include conditions and the conditions shall be binding on Grantee. Such construction work shall be done in a safe manner subject to the approval of the City Engineer and in accordance with requirements of applicable federal and state laws and City ordinances. All work done shall be subject to the rejection or correction requirements of the City Engineer and subject to the City Engineer's approval.

Section 10. Street Excavations and Restorations.

(1) Subject to the provisions of this ordinance, the Grantee or its subcontractor may make necessary excavations for the purpose of constructing, installing, maintaining and operating its Gas Facilities. In all circumstances pertinent to this agreement, any action by Grantee's subcontractors shall be the responsibility of Grantee. Any subcontractor of Grantee shall be bound to the requirements of this agreement.

(2) Except in emergencies, and in the performance of routine service connections and ordinary maintenance, on private property, prior to making an excavation in the traveled portion of any Right-of-Way, and, when required by the City, in any untraveled portion of any Right-of-Way, Grantee shall obtain from the City approval of the proposed excavation and of its location.

(3) Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

(4) When Grantee does any work in the unimproved portion of a Right-of-Way, Grantee or its subcontractor, shall promptly restore the affected portion of Right-of-Way to the same condition in which it was prior to the excavation. When Grantee does any work in an improved portion of a Right-of-Way, Grantee or its subcontractor shall promptly restore the affected portion of the Right-of-Way in compliance with the conditions in any permit issued by the City or any specifications, requirements and regulations of the City in effect at the time of the work. All work done shall be subject to the rejection and correction requirements of the City Engineer's approval. If Grantee or its subcontractor fails to restore promptly the affected portion of a right-of-way in accordance with City Standard Construction specifications in effect at the time of the work, the City may make the restoration, and the cost thereof shall be paid by Grantee.

Section 11. Location and Relocation of Facilities.

(1) All Gas Facilities of Grantee shall be placed so that they do not interfere unreasonably with the use of the Right-of-Way by the City and the public and in accordance with any specifications adopted by the City governing the location of facilities.

(2) The City may require the removal or relocation, temporarily or permanently, of facilities maintained by Grantee in the streets of the City. Grantee shall remove and relocate such facilities within 120 days after receiving notice so to do from the City. The cost of such removal or relocation shall be paid by Grantee; however, in the event that the removal, relocation, change or alteration is needed to accommodate private development or other private use of the Right-of-Way, the developer or other private party requiring the action shall be responsible for the cost of removal, relocation, change or alteration. Construction of public improvements by a private party within the Right-of-Way as a condition of City approval shall be considered installation of public improvements of the City if the improvement is not needed to provide service to the private party. In the event of a dispute as to whether the removal, relocation, change or alteration is a public improvement or accommodates private development, the dispute shall be referred to the City Administrator, whose decision shall be final and binding.

Section 12. Compensation.

(1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to three percent (3%) of the gross revenue collected by the Grantee from its customers for gas consumed within the City. "Gross Revenues" means revenues received from the use of the Gas Utility System within the City Limits less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the Gas Facilities, except when those revenues have been paid to Grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within the City Limits. Gross revenues shall not include revenues derived from the sale and transportation of gas supplied under an interruptible tariff schedule and revenues paid directly by the United States of America or any of its agencies. Gross revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross Revenues will also not included public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raise revenue used solely for a public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee's Gas Facilities in the City.

(2) The City shall retain the right, as permitted by Oregon Law, to charge a privilege

tax in addition to the franchise fee set forth herein based on the Gross Revenues of the company, payable on the same terms and conditions as the franchise fee itself.

(3) The compensation required by this section shall be due for each calendar year, or fraction thereof, within thirty (30) days after the close of such calendar year, or fraction thereof. Within thirty (30) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.

(4) Grantee shall furnish to the City Finance Director with each payment of compensation required by this section a written statement, showing the amount of Gross Revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due to City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from Grantee.

(5) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior to the acceptance, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 13. <u>Book of Account and Reports.</u>

On an annual basis, upon thirty (30) days prior written notice, the City or its agent shall have the right to conduct an audit or review of Grantee's records reasonably related to the administration or enforcement of this ordinance. All amounts of Franchise Fees paid by Grantee shall be subject to audit or financial review by the City, provided that only payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date the City notifies the Grantee of its intent to perform an audit or financial review. If an audit or review of the records determines that franchise fees have been underpaid by more than 5% of the amount that should have been paid, Grantee shall reimburse the City for the total cost of the audit or review within thirty (30) days of City's written demand for same. All amounts underpaid shall accrue interest at the statutory rate from the effective date of the underpayment.

Section 14. <u>Classification of Fees.</u>

The City Council determines that any fees imposed by this franchise are not taxes subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 15. <u>As-Built Drawings.</u>

Subject to the confidentiality limitations of this section, Grantee shall make available to City at an office in Oregon within 100 miles of Woodburn, available maps of the location of its Gas Facilities and operational data requested by the City. The Grantee

shall also make available as-built plans for those portions of the system that are added to or modified during the year. These records are submitted in confidence, and the City will keep those records in confidence and not allow others to view or copy them. The City agrees to keep the documents confidential and to take the position that they are exempt from public disclosure. The City shall limit access to the as-built drawings to City employees or City contractors with a need to know where the Grantee's Gas Facilities are located and shall review the as-built drawings only as necessary to plan City projects, coordinate the use of the Right-of-Way, and to protect the public health and safety.

Section 16. Indemnification.

Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 17. Sale or Assignment of Franchise.

Grantee shall not during the term of this Franchise sell, assign, transfer or convey this franchise without first obtaining the consent of the City Council, by ordinance, which consent shall not be unreasonably withheld. All of the provisions of this ordinance shall inure to and bind the successors and assigns of the Grantee. Whenever Northwest Natural shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of Northwest Natural as shall have been so consented to by the City Council.

Section 18. Termination of Franchise for Cause.

The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 19. Renegotiation of the Franchise.

If the State of Oregon or the PUC amends or adopts a state statute or administrative rule that would affect a term, condition, right or obligation under this agreement, either party may reopen the franchise agreement at any time with regard to such term, conditions, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

Section 20. Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or

enforcement of any other such remedy of penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 21. Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails to do so, this ordinance shall be void.

Section 22. Prior Ordinance Repealed.

Ordinance 2376 is hereby repealed.

Section 23. [Emergency clause and effective date.]

Passed by the Council October 27, 2014 and approved by the Mayor October 29, 2014.

ORDINANCE NO. 2460

AN ORDINANCE REGULATING SOLID WASTE MANAGEMENT INCLUDING, WITHOUT LIMITATION, GRANTING AN EXCLUSIVE SOLID WASTE FRANCHISE TO UNITED DISPOSAL SERVICE, INC., AN OREGON CORPORATION, dba ALLIED WASTE SERVICES OF MARION COUNTY – WOODBURN"; ESTABLISHING SERVICE STANDARDS AND ESTABLISHING PUBLIC RESPONSIBILITY; REPEALING ORDINANCE 1641; PRESCRIBING PENALTIES; AND STATING AN EFFECTIVE DATE.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1 - Introduction

1.1 Short Title. This ordinance shall be known as the "Solid Waste Management Ordinance," and may be cited herein as "this Ordinance."

1.2 Purpose and Policy. In order to protect the health, safety and welfare of the people of the City of Woodburn, it is the public policy of the City of Woodburn to regulate and to provide a solid waste management program.

1.3 Solid Waste Management Goals.

1.3.1 Ensure the safe and sanitary accumulation, storage, collection, transportation and disposal or resource recovery of solid wastes. Ensure proper handling of household hazardous waste, ensure that the community has an ongoing resource recovery and disposal service, and ensure that waste shed recycling goals are met.

1.3.2 Promote technologically and economically feasible resource recovery including source separation, recycling and reuse, and separation by and through the collector. Research, develop and promote waste reduction strategies.

1.3.3 Ensure efficient, economical and comprehensive solid waste service. Maximize collection services to reduce the adverse environmental impacts of individual collection and disposal efforts. Minimize duplication of service or routes to conserve energy and material resources, to reduce air pollution and truck traffic, and to increase efficiency, thereby minimizing consumer cost, street wear, and public inconvenience.

1.3.4 Protect and enhance the public health and the environment.

1.3.5 Protect against improper and dangerous handling of hazardous and infectious wastes.

1.3.6 Ensure service rates and charges that are just and reasonable and adequate to provide necessary public services.

1.3.7 Provide for charges to the users of solid waste services that are reasonable, equitable, and adequate to provide necessary service to the public, justify investment in solid waste management systems, and provide for equipment and systems modernization to meet environmental and community service requirements.

1.3.8 Prohibit discrimination on the basis of race, color, creed, religion, sex, age, and national origin, source of income, political affiliation, disability, sexual orientation, or marital status.

1.3.9 Work in cooperation with the City of Woodburn, Marion County, and local industries to reduce the quantity of waste produced, increase recycling, generate efficiencies, and conserve resources.

1.3.10 Demonstrate a responsive, customer-service oriented business philosophy.

1.4 Definitions. For the purpose of the ordinance, the following terms shall have the following meaning:

"Bin" means receptacle provided by Franchisee, used by customers for the containment and disposal of recyclable material.

"Can" means receptacle owned by a customer, used for the containment and disposal of solid waste. The customer's use of a can requires manual collection.

"Cart" means receptacle provided by Franchisee, used by a customer for the containment and disposal of solid waste or recyclable material. The customer's use of a cart requires automated collection service.

"City" means the City of Woodburn, Oregon, and the area within its boundaries including its boundaries as extended in the future and all property owned by the City, outside City limits.

"City Administrator" means the City Administrator or his/her designee.

"City Council" means the legislative body of the City.

"**Compact and Compaction"** means the process of, or to engage in the shredding of material, or the manual or mechanical compression of material.

"Compensation" means consideration of any kind paid for solid waste management services, including but not limited to, the direct payment of money, including the proceeds from resource recovery or the provision of solid waste services to customers.

"Container" means a receptacle one cubic yard or larger in size, used to store

solid waste or wastes or recyclable material, but not a drop box or compactor.

"Dispose or Disposal" means the accumulation, storage, discarding, collection, removal, transportation, recycling or resource recovery of solid waste.

"Drop Box" means a single receptacle designed for storage and collection of large volumes of solid waste or wastes or recyclable materials, which is usually ten cubic yards or larger in size, and provides for transportation of large volumes of solid waste or recyclable materials and is transported to a disposal or processing site for transfer, landfilling, recycling, materials recovery or utilization and then emptied and returned to either its original location or to some other location.

"Excluded Waste" means hazardous waste; household hazardous waste; infectious waste; toxic substances, wastes or pollutants; contaminants; pollutants; or radioactive wastes.

"Franchisee" means **UNITED DISPOSAL SERVICE, INC., AN OREGON CORPORATION, dba ALLIED WASTE SERVICES OF MARION COUNTY – WOODBURN"** granted a franchise pursuant to Section 2 of this Ordinance or a subsequent ordinance.

"Generator" means the person who produces solid waste or recyclable material to be placed, or that is placed for collection and disposal. As used in this Ordinance, "generator" does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste or recyclable material after it has been produced by the generator and placed for collection.

"Hazardous Waste" means any hazardous wastes as defined by ORS 466.005.

"Holidays" means legal holidays observed by the City of Woodburn.

"Household Hazardous Waste" means any discarded or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment, is commonly used around households and is generated by the household.

"Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps, or as infectious waste is defined in ORS 459.386.

Mixed Recycling" means the process where two or more types of recyclable materials are collected together (i.e., not separated) in a combination allowed by the City Administrator, and as approved by the Oregon Department of Environmental Quality.

"Persons" means any individual, partnership, business, association, corporation,

cooperative, trust, firm, estate, joint venture or other private entity or any public agency.

"Pilot Program" means a program which allows Franchisee to offer services on a trial basis for six months or less and to determine rates for such services outside the approved rate structure. City Council approval is required prior to implementation of a pilot program.

"Placed for Collection" means to put solid waste, recyclable material or yard debris out for collection by Franchisee, as provided by this Ordinance.

"Public Place" means any City-owned park, place, facility or grounds within the City that is open to the public, but does not include a street or bridge.

"Public Rights-of-Way" means, without limitation, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, park strips and all other public ways or areas, including subsurface and air space over these areas.

"Putrescible Material" means organic materials that can decompose, which may create foul-smelling, offensive odors or products.

"Rate" means the amount approved by the City Council as a charge for service rendered and charged by Franchisee, including the franchise fee, to users of the service**.**

"Receptacle" means cans, carts, bins, containers, drop boxes, or other vessel used for the disposal of solid waste, recyclable material or yard waste that has been approved by the City Administrator and into which solid waste, recyclable material or yard debris may be placed for collection.

"Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material and excludes excluded waste.

"Recycling" means any process by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Ordinance, recycling includes the collection, transportation and storage of solid waste, done in order to place the solid waste in the stream of commerce for recycling; or for resource recovery.

"Resource Recovery" means the process of obtaining useful material or energy resources from solid waste, including reuse, recycling, and other material recovery or energy recovery of or from solid wastes.

"Service" means the collection, transportation, storage, transfer, or disposal of or resource recovery from solid waste by Franchisee. It also includes, without limitation, collection or source separated materials for compensation. "Service"

includes the providing of "Special Service" as defined below.

"Solid waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper, cardboard, sewage sludge, septic tank and cesspool pumpings, or other sludge, useless or discarded commercial, industrial, demolition, and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, dead animals and infectious waste as defined in ORS 459.386. Solid waste does not include excluded waste.

"Solid Waste Management" means the business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling and resource recovery of solid waste.

"Source Separation" means the separation of waste materials by the generator in preparation for recovery by recycling or reuse.

"Special Service" means collection of bulky waste, including furniture, appliances and large quantities of waste.

"Total Source Separation" means the complete separation by the source generator or producer of the waste by type or kind of waste from all other types or kinds of waste.

"Train System" means a group of small receptacles (typically 1-2 cubic yard capacity) placed in various locations around a customer's property, by the customer and once full, either linked together or placed upon a trailer for transport and disposal to a larger receptacle or compactor on the premises.

"Waste" means any material that is no longer wanted by or is no longer usable by the generator, producer or source of the material, which material is to be disposed of or to be resource-recovered by another person. Even though materials which would otherwise come within the definition of "waste" may from time to time have value and thus be resource-recovered does not remove them from this definition. Source-separated wastes are "wastes" within this definition.

"Yard Debris" means grass clippings, leaves, tree and shrub prunings of no greater than four inches in diameter, or similar yard and garden vegetation. Yard Debris does not include dirt, sod, stumps, logs or tree/shrub prunings larger than four inches in diameter.

Section 2 - Grant of Authority and General Provisions

2.1 <u>Franchise</u>. Subject to the conditions and reservations contained in this ordinance, the City Council hereby grants to **UNITED DISPOSAL SERVICE, INC. , AN OREGON CORPORATION, dba ALLIED WASTE SERVICES OF MARION COUNTY –**

WOODBURN"," the exclusive right, privilege, and franchise to collect, dispose, sell and transport solid waste and recyclable material generated as of the effective date of this
ordinance within the corporate limits of the City of Woodburn and in any area that may thereafter be annexed to the City.

2.2 Exceptions. Unless accepted by subsections below, or granted an exclusive franchise pursuant to this Ordinance, no person shall solicit customers for service, or advertise the providing of service, or provide service in the City. Nothing in this ordinance requires a franchise for the following:

2.2.1 The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such activity.

2.2.2 The collection, transportation, and reuse or recycling of totally source-separated materials or operation of a collection center for totally source-separated materials by a religious, charitable, benevolent or fraternal organization, provided the organization is using the activity for fund raising. Organizations engaged in these activities shall make periodic reports in a form as the City Administrator may reasonably require.

2.2.3 The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459A and that portion commonly known as the "Bottle Bill."

2.2.4 The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business of auto wrecking to the extent licensed by the state of Oregon; janitorial service; septic tank pumping, sludge collection or disposal service; or gardening or landscape maintenance. "Janitorial service" does not include primarily collecting wastes generated by a property owner or occupant.

2.2.5 The transportation of solid waste by an individual, produced by such individual or the individual's household, to a disposal site or resource recovery site. In the case of non-owner-occupied property, the waste is produced and owned by the tenant and not by the landlord, property owner or agent.

2.2.6 A contractor registered under ORS Chapter 701 for hauling waste created in connection with the demolition, construction, or remodeling of a building structure or in connection with land clearing and development. Such waste shall be generated by the contractor in connection with the contractor's construction site and hauled in equipment owned by the contractor and operated by the contractor's employees.

2.2.7 Government employees providing solid waste and recycling collection services to City operations and facilities.

2.3Term.

(a)This franchise ordinance and the rights and privileges granted herein shall take effect upon written acceptance by Franchisee and remain in effect for a term of seven (7) years.

(b) Upon an affirmative finding based on its annual review of the material submitted pursuant to Sections 3.16 and 3.17, et. seq. of this agreement, at the end of the franchise term, the Council may add an additional year to the term of the franchise.

(c) The City Council may choose to not extend a franchise after seven (7) years under this section for any reason. If the City Council chooses not to extend a franchise, at least sixty days before the date that the franchise would otherwise expire, the City Council shall provide Franchisee with written notice of the City Council's intent not to extend the franchise. Franchisee shall have thirty days from the date of the notice to request a public hearing. If, following the public hearing, the City Council reaffirms the decision not to extend the franchise term, the franchise shall expire at the end of its existing term, and shall not automatically be extended as provided in this section. Nothing in this subsection shall prevent a Franchisee from applying for a new franchise.

(d) Prior to the issuance or extension of a franchise, the City Council shall provide notice and opportunity for public comment.

(e) If the City Administrator determines service standards are not being met, the City Administrator may re-open this franchise for renegotiation.

(f) The terms of the franchise must be unconditionally accepted by **UNITED DISPOSAL SERVICE, INC. , AN OREGON CORPORATION, d/b/a ALLIED WASTE SERVICES OF MARION COUNTY – WOODBURN"** in writing, and signed by an officer of the corporation within 30 days after the date this ordinance is passed by the City. If **UNITED DISPOSAL SERVICE, INC. , AN OREGON CORPORATION, d/b/a ALLIED WASTE SERVICES OF MARION COUNTY – WOODBURN"** fails to do so, this ordinance shall be void.

2.4 Ownership of Waste. Unless otherwise stated, solid waste properly placed out for collection is the property of the Franchisee.

2.5 Infectious Waste. Franchisee is not required to store, collect, transport, dispose of or resource infectious waste.

2.6 Hazardous Waste. Except as otherwise provided in this ordinance, Franchisee is not required to store, collect, transport, dispose of or resource recover hazardous waste or excluded waste.

2.7 Separation of Waste. The City Council reserves the right to require the separation of component parts or materials in or from solid wastes, and to require the

deposit thereof in receptacles or places and to prescribe the method of disposal or resource recovery.

2.8 City Authority. The City reserves the right to determine the services authorized by this franchise agreement.

Section 3 - Community Standards for Collection and Disposal of Solid Waste and Recyclable Materials

3.1 Collection Standards. Collection of solid waste and recyclable material shall be performed in such a way as to comply with all Federal, State and local environmental regulations. In addition Franchisee shall:

3.1.1 Provide solid waste and recycling collection services to all persons living within or conducting business within the City limits of the City.

3.1.2 Collect putrescible material at least once each week.

3.1.3 Provide collection of infectious waste as defined in ORS 459.387,. Collection shall be provided in a manner consistent with the requirements of all applicable laws and regulations.

3.1.4 Perform collections twice weekly in the business districts of the City, except Sundays and holidays. Downtown business district collection hours are 4:30 am to 6:30 am. Collection hours shall be scheduled to minimize noise and disruption to residents in or near the downtown business district.

3.1.5 Perform curbside collections of solid waste at least once weekly in residential districts or as often as required by ORS 459 and ORS 459.A. Collection hours shall be between the hours of 6:00 am and 5:30 pm, Monday through Friday. All collections shall be made as safely, efficiently and quietly as possible.

3.1.6 Perform curbside collections of recyclable materials at least bi-weekly or as often as required by ORS 459 and ORS 459.A. Collection of recyclable materials shall be made subject to the same requirements and within the same hours as those made for solid waste.

3.1.7 Provide collection of residential solid waste carts or cans, recyclable materials, and yard debris carts on the same day of the week. Franchisee shall not go into garages or other buildings to make pick-ups at residences, nor shall Franchisee go into closed areas, through enclosed gates, or up or down stairs to make pick-ups., unless defined as a special service.

3.1.8 Provide will-call service for container service for residential and commercial customers within 48 hours of initial request for service.

3.1.9 Use due care to prevent solid waste from being spilled or scattered during

collection. If any solid waste or recyclable material is spilled during collection, Franchisee shall promptly clean up all spilled materials. All can/cart and container lids must be replaced after contents are emptied and the can/cart or container shall be returned to its original position so as to not jeopardize the safety of motorist, pedestrians or bicyclists. Franchisee shall also collect any solid waste or recyclable materials that may have been spilled or scattered prior to collection, in the immediate area of cans and carts.

3.1.10 Use reasonable care in handling all collection receptacles and enclosures. Damage caused by the negligence of Franchisee's employees to private property, including landscaping, is the responsibility of Franchisee and shall be promptly adjusted with the owner.

3.1.11 Ensure that all solid waste and recycling collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise emission standards. Unnecessarily noisy trucks or equipment are prohibited. The City Administrator may conduct random checks of noise emission levels to ensure such compliance.

3.1.12 Determine, with approval of the City Administrator, the maximum allowable capacity of cans, carts or containers. If Franchisee refuses to service an overweight can, cart or container, a notice describing the problem must be provided. The notice shall include the name of Franchisee, employee, alternative solutions to resolve the problem and a local phone number for additional information. Franchisee must provide double the customer's subscribed service level at no additional charge on the customer's next scheduled collection day, if a special pick-up has not been requested in the meanwhile. If a special pick-up has been requested, Franchisee may charge the normal will-call rate.

3.1.13 Refuse specific residential collections, if access to a can, cart or container, is blocked by a vehicle. For purposed of this section, "blocked" shall be defined as parked immediately in front of, or at the curb within ten feet to either side of such containers. If Franchisee refuses to service a can, cart or container for this reason, a notice describing the problem must be provided. The notice shall include the name of Franchisee, employee, reason for collection refusal, solution for resolving the problem and a local phone number for additional information. Franchisee must provide double the customer's subscribed service level at no additional charge on the customer's next scheduled collection day, if a special pick-up has not been requested in the meanwhile. If a special pick-up has been requested, Franchisee may charge the normal will-call rate.

3.1.14 Offer unlimited vacation credits to customers who temporarily discontinue service in a calendar year for any period of two (2) weeks or more. The customer must request the discontinuance no later than noon on the business day, excluding weekends, prior to the date of discontinuance.

3.1.15 Notify, in the event of changes to the collection schedule, all affected customers within fourteen (14) calendar days of any change. Franchisee shall not permit any customer to go more than seven (7) calendar days without service in connection with a collection schedule change.

3.1.16 Have the option to limit acceptable methods of payment. Franchise must, however, at a minimum, accept cash, personal checks, cashiers checks, money orders, and bank drafts, and provide for online payment with a credit card.

3.1.17 Have the option to refuse collection service upon non-payment of a billing or portion of a billing after account becomes 45 days past due, or upon refusal to pay required advance payments, delinquent charges, or charges associated with starting a new service. Franchisee may withhold collection services, providing at least a ten (10) day notice is given to subscriber.

3.1.18 Continue collection services except in cases of street or road blockage, excessive weather conditions, natural or man-made disasters, or customer violations of public responsibilities beyond Franchisee's control. Adverse labor relations issues such as strikes or walk-outs shall be considered to be within the control of the franchisee and shall not prevent collection and disposal services as required by this ordinance.

3.1.19 Franchisee shall dispose of solid waste in the nearest disposal site permitted by the Oregon Department of Environmental Quality unless extraordinary circumstances apply. City Council reserves the right to approve any disposal site used by Franchisee.

3.2. Preventing Interruption of Service. In the event of an immediate and serious danger to the public creating a health hazard or serious public nuisance, the City Administrator may, after a minimum of 24 hours notice to Franchisee, authorize another person to temporarily provide emergency service under this ordinance or the City may elect to provide such service. Upon request of Franchisee, a public hearing shall be provided before the City Council and the decision to provide temporary service shall be reconsidered. Franchisee agrees as a condition to this franchise that any equipment used for the services provided under this franchise may be used to provide such emergency service. The City shall return any such property of Franchisee upon abatement of the health or nuisance hazards created by the general interruption of service. In the event the power under this section is exercised, the usual charges for service shall prevail and Franchisee shall be entitled to collect for such usual services, but shall reimburse the City for its actual costs, as determined by the City.

3.3 Recycling Standards. Recycling services shall include the following:

3.3.1 For residential customers with regular weekly solid waste service, provide on-route residential recycling service including one 65-gallon (1) roll cart, one (1) recycle bin and one (1) yard debris cart or composter at no additional charge.

Customers may, at their option, upgrade to a 95 gallon roll cart at no additional cost.
Additional carts and bins for recycling shall be provided upon request at a cost not greater than the actual cost incurred by Franchisee.

3.3.2 For customers in single-family households, the following material at a minimum shall be picked up curbside once every other week on a designated collection day: newspapers, corrugated cardboard, brown paper bags, mixed paper consisting of household mail, paperboard, and magazines, glass bottles and jars, aluminum and tin, plastics, and aerosol cans. Batteries, oil, and latex paint shall also be collected every other week, but shall be segregated from other recyclable materials in a bin provided by the Franchisee for that purpose.

3.3.3 For apartments and other multi-family households and units requesting such service, the following material at a minimum shall be collected once each week on a designated collection day: newspapers, corrugated cardboard, brown paper bags, mixed paper consisting of household mail, paperboard, and magazines; and glass bottles and jars, aluminum and tin, plastics, and aerosol cans. Batteries, oil and latex paint shall also be collected weekly, but shall be segregated from other recyclable materials in a bin provided by the Franchisee for that purpose. . Materials shall be collected curbside or in a designated collection center in cooperation with the building owner or manager.

3.3.4 Yard debris carts for residential customers shall be picked up weekly on the same day as solid waste collection. Yard debris must be disposed at a compost/mulch facility registered with the Oregon Department of Environmental Quality.

3.3.5 Recycling-only customers shall be offered 65 gallon Carts and be provided bi-weekly recycling service at a rate established by the City Council.

3.3.6 Commercial recycling service includes carts, recycle bins, and cardboard recycling containers and shall be provided at no additional charge.

3.3.7 For commercial customers, the following recyclable material, at a minimum, shall be collected once each week on a designated collection day: office paper and mail, corrugated cardboard, newspapers, paperboard, magazines, brown paper bags, wood, glass bottles and jars, aluminum and tin, plastic, and aerosol cans. Batteries, oil, and latex paint shall also be collected weekly, but shall be segregated from other recyclable materials in a bin provided by the Franchisee for that purpose.

3.3.8 For large quantities of cardboard, the frequency of pickup-service shall be determined by agreement between the generator and the collector. Agreements shall give due consideration to the volume of the material, storage capacity of generator, and generator's location.

3.3.9 Franchisee must provide notice to customer if recyclable material placed at curbside is not collected due to improper preparation. Notice must include

adequate explanation of refusal for collection, name of employee and local phone number for additional information. Employee shall leave notice securely attached to
the customer's bin or the customer's front door. Employee shall collect any properly prepared material that is accessible. The purpose of the notice is to educate residents and increase program participation, and shall be written in such a manner as to accomplish this purpose.

3.3.10 Operate and maintain at least one (1) collection center within the City limits that permits residents to deliver recyclables to the site. Collection center shall be open to the public between the hours of 8 am to 5 pm Monday through Friday, and 8 am to Noon on Saturdays. Said site shall accommodate at a minimum all recyclable materials collected at curbside, as well as scrap metal and other types of glass and plastic. Materials such as Styrofoam, textiles, and electronics shall be recycled when it is technologically or economically feasible to do so.

3.3.11 Facilitate a reuse program referring useable items to local thrift shops, resale shops, non-profit groups or others who may have a legitimate use for the item. Maintain a list of businesses and groups that submit requests for needed items, and provide this information to others as requested.

3.3.12 Research and develop improved recycling and reuse systems.

3.4 <u>Public Education</u>. Franchisee shall provide the following public education and promotion of activities for waste reduction, recycling, reuse, and source separation, and cooperate with other persons, companies, or local governments providing similar services. Franchisee shall:

3.4.1 Provide a recycling information center within City limits, with local
telephone access and information concerning collection schedules, recycling locations, recyclable material preparation, conservation measures, reuse programs, waste reduction strategies and on-site demonstration projects. Recycling information
booths at appropriate community events shall also be provided by Franchisee to promote and increase recycling awareness and participation.

3.4.2 Provide recycling notification and educational packets for all new residential, commercial, and industrial collection service customers specifying the collection schedule, materials collected, proper material preparation, reuse programs, waste reduction strategies and recycling benefits.

3.4.3 Provide semi-annual informational/promotional pamphlets to residences and businesses in the City that include the materials collected and the schedule for collection. Information about waste reduction, reuse opportunities, proper handling and disposal of special wastes (household hazardous wastes) and the reduction of junk mail shall be included on a regular basis. Special community solid waste events, and the holiday tree removal program shall also be promoted when appropriate. Informational/promotional pamphlets shall be distributed to all mailing addresses within

the City.

3.4.4 Develop by December 31, 2009 and then maintain an Internet web site that includes a listing of all franchised solid waste and recycling services and applicable rates charged for such services.

3.4.5 Perform waste audits for those commercial and industrial customers requesting one, and conduct, at least annually, workshops on waste reduction strategies and reuse opportunities.

3.4.6 Coordinate with the Woodburn School district and local private schools to assist in promoting awareness of recycling and waste reduction strategies to children, and to cooperate with the district in their recycling efforts and programs.

3.4.7 Promote solid waste reduction and recycling education through local widespread media, such as radio or newspapers, no less than 18 times each year. Promotional information shall focus on recycling, reuse and waste reduction strategies.

3.4.8 Provide the City Administrator with sufficient copies of all promotional fliers and other related information as requested.

3.4.9 Conduct a bi-annual survey to evaluate customer participation in recycling programs and customer opinion of solid waste and recycling services offered by Franchisee. Statistics shall be used to enhance existing recycling educational materials and increase program participation. Significant statistical changes in the survey shall afford the City Administrator the option to renegotiate Section 3 of this agreement.

3.5 Resource Recovery Services.

3.5.1 Aggressively seek markets for reusable, recyclable, and recoverable materials and purchase such materials from others.

3.5.2 Develop strategies to promote the reduction of solid waste generated by residential, commercial and industrial customers. Promote programs preventing or reducing at the source those materials which would otherwise constitute solid waste.

3.6 County Wasteshed. Coordinate recycling efforts with other solid waste collection efforts in the Marion County Wasteshed to further enhance recycling and recovery, efforts, and to meet wasteshed recovery goals as mandated by the state.

3.7 Additional Recycling Requirements.

3.7.1 The City Administrator reserves the right to require specific materials to be separated, collected and recycled.

3.7.2 Franchisee shall provide other recycling services as required by Oregon Revised Statute 459.A, City Council, ordinance, or municipal code.

3.7.3 Franchisee shall recycle additional materials when economically feasible and provide for an on-site collection center for household hazardous waste.

3.8 Community Service Standards.

3.8.1 Franchisee shall provide for storm debris collection of tree limbs, leaves, etc., on an as needed basis. Franchisee may charge a fee for such service.

3.8.2 Franchisee shall provide an annual residential cleanup, collecting scrap and recyclable material, yard debris and appliances, at no additional charge; however, Franchisee may charge, as a pass-through cost, the CFC evacuation fee on appliances.

3.8.3 Franchisee shall provide collection and recycling of holiday trees placed at curbside for a period of three (3) weeks, beginning December 26th of each year, at no additional charge.

3.8.4 Franchisee shall provide twice weekly solid waste collection and disposal service of public litter receptacles, in the central business district of the City, including the Woodburn Downtown Plaza, except weekends and holidays.

3.8.5 Franchisee shall provide once weekly solid waste collection and disposal service at the following facilities at no charge to the City:

a. City Hall
b. Woodburn Public Library
c. Woodburn Memorial Aquatic Center
d. Woodburn Police Facility
e. Woodburn Public Works Annex
f. Public Works Corporation Yard

3.9 Additional Services. Where a new service or a substantial expansion of an existing service is proposed by the City Administrator, another person or Franchisee, the following shall apply:

3.9.1 If service is proposed by the City Administrator, Franchisee shall receive prior written notice of the proposed service and justification by the City Administrator. If service is proposed by Franchisee or another person, the City Administrator must be notified in writing prior to any consideration by the City.

3.9.2 The City may hold a public hearing on the proposed service and justification.

3.9.3 In determining whether the service is needed, the City shall consider the public need for the service, the effect on rates for service and the impact on other

services being provided or planned, the impact on any city, county or regional solid waste management plan, and compliance with any applicable statutes, ordinances or regulations.

3.9.4 If the City determines the service is needed, Franchisee shall have the option to provide the service on a temporary basis through a pilot program to determine if the service is functional on a permanent basis or Franchisee may agree to provide the service on a permanent basis within a specified time.

3.9.5 If Franchisee rejects the service, the City may issue a franchise or permit to another person to provide only that service. The provider of the limited service shall comply with all applicable provisions of this ordinance.

3.10 Special Service.

3.10.1 If a customer requires an unusual service requiring added or specialized equipment solely to provide that service, Franchisee may require a contract with the customer to finance and assure amortization of such equipment. The purpose of this subsection is to assure that such excess or specialized equipment does not become a charge against other ratepayers.

3.11 Sub-Contract. Franchisee may sub-contract with other persons to provide specialized or temporary service covered by this franchise, but shall remain totally responsible for compliance with this agreement. Franchisee shall provide written notice of intent to sub-contract services prior to entering into agreements. If sub-contracting involves a material portion of the franchised service, Franchisee shall seek the approval of the City.

3.12 Equipment and Facility Standards.

3.12.1 All equipment shall be kept well painted, and properly maintained in good condition. Vehicles and containers used to transport solid waste shall be kept clean to ensure no contamination to the environment or the City's storm water system.

3.12.2 All vehicles and other equipment shall be stored in a safe and secure facility in accordance with applicable zoning and environmental regulations.

3.12.3 Trucks shall be equipped with a leak proof metal body of the compactor type including front, rear, or automatic loading capabilities.

3.12.4 Pick-up trucks, open bed trucks or specially designed, motorized local collection vehicles used for the transporting of solid waste must have a leak proof metal body and an adequate cover over the container portion to prevent scattering of the load.

3.12.5 All fuel, oil, or vehicle fluid leaks or spills which result from Franchisee's vehicles must be cleaned up immediately. All vehicles must carry an acceptable

absorbent material for use in the event of leaks or spills. Damages caused by fuel, oil, or other vehicle fluid leaks or spills from Franchisee's vehicles or equipment shall be at Franchisee's expense.

3.12.6 All vehicles used by Franchisee in providing solid waste and recycling collection services shall be registered with the Oregon Department of Motor Vehicles and shall meet or exceed all legal operating standards. In addition, the name of Franchisee, local telephone number and vehicle identification number shall be prominently displayed on all vehicles.

3.12.7 All collection vehicles shall not exceed safe loading requirements or maximum load limits as determined by the Oregon Department of Transportation. Franchisee shall endeavor to purchase and operate equipment that minimizes damage to City streets.

3.12.8 Franchisee shall provide and maintain equipment that meets all applicable laws, ordinances, municipal codes, and regulations or as directed by the City Administrator.

3.12.9 Franchisee shall provide and replace as necessary, garbage collection carts, yard debris carts, and recycle bins at no charge to the public. Cart sizes offered for solid waste disposal include 20, 32, 64, and 90 gallon capacity. Yard debris carts shall be 65 gallon capacity. Recycle carts may be either 65 or 95 gallon capacity, depending on customer choice. Solid waste, yard debris, and recycling carts shall be leak-proof, rigid, fireproof, and of rodent proof construction and not subject to cracking or splitting. The City Administrator has the right to approve all receptacles provided by Franchisee for use in the City and may require additional or alternative receptacle sizes. Customers may, at their election, change their cart size once each calendar year at no cost. For each subsequent change within the same calendar year, Franchisee may charge a fee, to recover the administrative costs of such change, as approved by the City Council.

3.12.10 Franchisee shall clean containers used by commercial customers once annually if requested by customer for no additional charge. If Franchisee determines such containers are becoming a health hazard, requiring more frequent cleaning, such service shall be an additional maintenance charge to the waste producer or generator.

3.12.11 In cooperation with the Woodburn Police Department, Franchisee shall remove graffiti from all containers or facilities within of the time Franchisee is notified of such need. Notification may be verbal, or in writing.

3.12.12 All surface areas around Franchisee's site facilities including vehicle and equipment storage areas, service shops, wash stations, transfer sites, collection centers, and administrative offices must be kept clean to eliminate direct site run-off into the City's storm water and open drainage system.

3.13 Safety Standards. Franchisee shall operate within guidelines of the Oregon Refuse and Recycling Association, Oregon Department of Transportation, Oregon Public Utility Commission, Oregon Occupational Health and Safety Administration, Department of Environmental Quality, Woodburn Municipal Code and all other rules and regulations as they apply.

3.13.1 Franchisee shall provide suitable operational and safety training for all of its employees who maintain, use, or operate vehicles, equipment, or facilities for collection of waste or who are otherwise directly involved in such collection. Employees involved in collection services shall be trained to identify, and not to collect, excluded waste. Employees who do handle such excluded waste shall be properly trained.

3.14 Right-of-Way Standards. Franchisee shall ensure proper and safe use of public right-of-ways and provide compensation to the City in consideration of the grant of authority to operate a solid waste collection and disposal system in the City of Woodburn as directed in this franchise agreement.

3.15 Customer Service Standards. Franchisee shall:

3.15.1 Provide sufficient collection vehicles, carts, bins, containers, drop boxes, facilities, personnel and finances to provide the services set forth in this franchise agreement.

3.15.2 Sufficiently staff, operate and maintain a business office and operations facility within the City.

3.15.3 Establish minimum office hours of 8:00 am through 5:00 pm, Monday through Friday, not including holidays.

3.15.4 Ensure a responsive, customer service oriented business. Provide customers with a local telephone number, listed in a local directory, to a local business office. Adequately staff operations to provide prompt response to customer service requests or inquiries and respond promptly and effectively to any complaint regarding service. Calls received by 1:00 pm by office staff shall be returned the same business day as call received, and by noon of the following business day if call is received after 1:00 pm. Franchisee shall promptly respond to all written complaints about service or rates.

3.15.5 Train collection crews prior to their beginning solid waste and recycling collection, and office staff prior to having public contact. The scope of the training shall include, but is not limited to, acceptable safety practices, acceptable standards of service to the public, courteous customer service, and accuracy and completeness of information

3.15.6 Require all employees of Franchisee and all employees of persons under

contract with Franchisee under this franchise agreement to present a neat appearance and conduct themselves in a courteous manner. Franchisee shall require its drivers and all other employees who come into contact with the public, to wear suitable and acceptable attire that identifies Franchisee.

3.15.7 Designate at least one (1) qualified employee as supervisor of field operations. The supervisor shall devote an adequate portion of his/her workday in the field checking on collection operations, including responding to issues.

3.16 Annual Customer Service Reporting Standards. Franchisee shall provide annual reports to the City Administrator by March 31st of each year during the term of the franchise.

3.16.1 Reports shall include a written log of all oral and written complaints or service issues registered with Franchisee from customers within the City. Franchisee shall record the name and address of complainant, date and time of issue, nature of issue, and nature and date of resolution. The City Administrator may require more immediate reports documenting complaints and resolutions.

3.16.2 Provide a summary of educational and promotional activities as required in Sub-section 3.4.

3.17 Annual Financial Reporting Standards. Franchisee shall keep current, accurate records of account. The City may inspect the Records any time during business hours and may audit the Records from time to time. If an audit of the Records is required, the cost of an independent audit, reasonably satisfactory to the City, shall be the responsibility of franchisee. Franchisee shall submit to the City Administrator a report annually, no later than March 31st of each year, documenting the activities and achievements of all programs undertaken pursuant to this franchise for the previous year. The City Administrator shall evaluate the effectiveness of the programs in terms of the amount, level, and quality of the services provided by Franchisee. The report shall include the following specified information:

3.17.1 Total franchise payments remitted and basis for calculations;

3.17.2 Year-end financial statements of Franchisee for service within the City limits only, including:

Summary of financial highlights
Statement of income and retained earnings
Balance sheet
Statement of changes in financial position
Schedule of expenses

3.17.3 Annual recycling data form as submitted to the Marion County Environmental Services Division.

3.17.4 Current and previous year total of residential, commercial and industrial customers within City limits, including tons of solid waste generated. Number of recycling customers within City limits and percentage of materials recycled.

3.17.5 A summary of the customer survey as required in Sub-section 3.4.9 and a summary of the annual customer service reports as required in Sub-section 3.16.

3.17.6 Document industry trends and direction of Franchisee over the next seven years.

3.17.7 Provide a summary of Community Involvement activities as required in Section 3.

3.17.8 Other information pertaining to performance standards specified in the franchise agreement.

Section 4 - Rates

4.1 Rate Structure. The City Council reserves the right to examine the rate structure of Franchisee, and to require specific services and approve rate changes which, in the discretion of the City Council, are reasonably required in view of the following considerations:

4.1.1 Franchisee shall have the right to charge and collect reasonable compensation from those whom it furnishes franchised services. The term "reasonable compensation" shall be defined at the discretion of the City after a study and consideration of rates for similar service under similar conditions in other areas, and as affected by local conditions in the local area. However, nothing in this section prohibits Franchisee from volunteering services at a reduced cost for a civic, community, benevolent or charitable program. Cash or in-kind contributions to such organizations shall be the sole responsibility of Franchisee and shall not be a factor in determining rates or increase the total amounts paid by ratepayers for which Franchisee serves under this agreement and shall not reduce the total amount of revenue paid to the City. Contributions shall not be taken into consideration in the rate approval process.

4.1.2 Franchisee shall provide to the City Administrator a copy of the published rate schedule which shall contain the rates and charges made for all its operations. The rate schedule shall be kept current. Franchisee shall file with the City Administrator, at least 90 days prior to any contemplated change, a complete, new and revised rate schedule which shall be examined by Council in a public hearing, subject to applicable notice requirements and affording due process. Franchisee shall also provide documented evidence of actual or projected increased operating costs within City limits which may justify proposed increases. Council may approve or deny any request based on criteria consisting of, but not limited to: increases in operating or capital costs, increases in City population; extension of City boundaries; increase of intensive

residential, commercial or industrial development within the City; changes in solid waste or recycling technology; changes in regulatory requirements; inability of Franchisee to adequately handle increased needs for said service; the rates in other cities for similar services; and the public interest by assuring reasonable rates to enable Franchisee to provide efficient and beneficial service to users of the service. The request shall be considered denied unless approved by Council prior to 30 days before the effective date. In the event of denial, the current rate schedule remains in effect and Franchisee may file with the Council further information to justify the rate schedule changes.

4.1.2.1 Rates established by Council are fixed rates and Franchisee shall not charge more or less than the fixed rate unless changed pursuant to Section 4. Franchisee shall not charge rates not in the rate schedule.

4.1.2.2 Rates for a given service must be established under the provisions of these guidelines before such service can be provided to customers unless services are being offered under a pilot program. If the City Administrator determines Franchisee is providing services for a fee without following these guidelines, the City Administrator may require Franchisee to continue providing such services at no charge to the customer until such time as the rates are approved as described under Section 4. If rates are not subsequently approved, Franchisee may discontinue service and shall take full responsibility in explaining to customers as to why the service is no longer being provided.

4.1.3 Franchisee may not give any rate preference to any person, locality, or type of solid waste collected, transported, stored, disposed of or resource recovered. This section shall not prohibit uniform classes of rates based on length of haul, time of haul, type or quantity of solid waste handled, and location of customers, so long as such rates are reasonably based on the cost of service and approved by City Council in the same manner as other rates.

4.1.4 The rates shall be subject to review and change only one (1) time in a calendar year, beginning January 1 and ending December 31; provided:

4.1.4.1 The City Council may at its sole discretion and with appropriate documentation submitted by Franchisee, grant an interim or emergency rate for changes in service, including pilot programs.

4.1.4.2 An additional application for a rate adjustment may be made when the cost of collection is increased by governmental regulations, or there is a single large increase in cost not anticipated at the last rate adjustment.

4.1.5 The approved rate schedule (Exhibit 1), as of the effective date of this ordinance, shall be deemed to be in effect.

Section 5 - Financial

5.1 <u>Compensation</u>. In consideration of the rights and privileges granted by this

ordinance, Franchisee shall pay to the City of Woodburn, five percent (5%) per annum of its gross revenues derived from all services within the City and from the sale of recyclable material collected within the City. Franchisee shall also pay five percent (5%) per annum of the gross revenues derived from franchised services within the City, as defined in this ordinance, earned by subcontractors of Franchisee within the City for services rendered pursuant to this franchise agreement.

5.1.1 Gross revenue of Franchisee shall mean revenues derived by Contractor within the City pursuant to this franchise agreement.

5.1.2 No expenses, encumbrances, or expenditures shall be deducted from the gross revenue in determining the total gross revenue subject to the franchise fee, except net uncollectables.

5.1.3 The compensation required in this section shall be due quarterly, on or before the 30th day of the month following last business day of every quarter. Franchisee shall furnish with each payment a notarized statement, executed by the General Manager, showing the amount of gross revenue of Franchisee within the City for the period covered by the payment computed on the basis as determined by Sub-section 5.1, Compensation. If Franchisee fails to pay the entire amount of compensation due to the City through error or otherwise within the time allotted for, the unpaid balance shall be subject to a late penalty of an additional ten percent (10%), plus interest of two percent (2%) per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.

5.1.4 If Franchisee is prohibited by state or federal law from paying a fee based on gross revenues or the City is prohibited by state or federal law from collecting such a fee, or if any legislation reduces the actual or projected amount of compensation collected in any given year, the City Administrator may renegotiate the compensation section of this franchise agreement.

5.1.5 Franchisee shall not separately identify its franchise fee on billing statements to customers unless it separately identifies all costs which constitute five percent (5%) or more of the costs paid by the revenues received from customers.

5.1.6 Nothing contained in this franchise shall give Franchisee any credit against any ad valorem property tax levied against real or personal property within the City, or against any local improvement assessment or any business tax imposed on Franchisee, or against any charges imposed upon Franchisee including permit and inspections fees or reimbursement or indemnity paid to the City.

5.2 <u>Insurance</u>. Franchisee shall pay, save harmless, protect, defend and indemnify the City from any loss or claim against the City on account of, or in connection with, any activity of Franchisee in the operation or maintenance of its facilities and services except those that arise out of the sole negligence of the City. Franchisee shall, for the purposes of carrying out the provisions of this agreement, have in full force and effect, and file evidence with the City Administrator the following

requirements:

5.2.1 Workers' Compensation insurance as required by Oregon Law, including Employers Liability Coverage.

5.2.2 Commercial General Liability insurance as broad as Insurance Services Office (ISO) form CG 00 01, providing Bodily Injury, Property Damage and Personal Injury on an occurrence basis with the following as minimum acceptable limits:

Bodily Injury and Property Damage - Each Occurrence	$2,000,000
Personal Injury - Each Occurrence	$2,000,000
Products & Completed Operations - Aggregate $3,000,000	
General Aggregate	$3,000,000

5.2.3 Business Automobile Liability as broad as Insurance Services Office (ISO) form CA 00 01, providing bodily injury and property damage coverage for all owned, non-owned and hired vehicles, with the following as minimum acceptable limits:

Bodily Injury and Property Damage - Each Occurrence	$1,000,000

5.2.4 Franchisee shall furnish the City Administrator with Certificates of Insurance and with original endorsements for each insurance policy (if needed). All certificates and endorsements are to be received and approved by the City Administrator before the effective date of this ordinance. The Commercial General Liability Certificate shall name the City of Woodburn, its officers, officials, employees and agents as Additional Insureds as respects to operations performed under this franchise agreement.; Franchisee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self insurance. All such deductibles, retentions, or self-insurance must be declared to and approved by the City Administrator.

5.2.5 Any Certificate shall state, "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named to the left." Any "will endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." shall be omitted.

5.3 <u>Hold Harmless</u>. The Franchisee agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents from any and all claims, demands, action, or suits arising out of or in connection with the City Council's grant of this franchise. Franchisee shall be responsible to defend any suit or action brought by any person challenging the lawfulness of this franchise or seeking damages as a result of or arising in connection with its grant; and shall likewise be responsible for full satisfaction of any judgment or settlement entered against the City in any such action. The City shall tender the defense to the Franchisee , and Franchisee shall accept the tender whereupon the City shall assign to Franchisee, complete responsibility of litigation including choice of attorneys, strategy and any settlement.

5.3.1 Franchisee's costs incurred in satisfying its obligations as defined in 5.3 above, shall not decrease the total amount of compensation paid to the City and shall not increase the total amounts paid by the ratepayers for which Franchisee serves under the authority of the franchise agreement. All such expenses shall be the sole responsibility and burden of Franchisee.

5.3.2 Damages. Damages and penalties under this Section 5.3 include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, theft, and fire Franchisee.

Section 6 - Administration and Enforcement

6.1 Customer Dispute Resolution Process.

6.1.1 Any citizen of Woodburn who is aggrieved or adversely affected by any application of the franchise or policy of Franchisee shall first attempt to settle the dispute by notifying Franchisee of the nature of the dispute and affording Franchisee the opportunity to resolve the dispute.

6.1.2 If the dispute is unresolved, the citizen may contact the City Administrator. The City Administrator may require a written description of the dispute from either party, and shall attempt to mediate and resolve the grievance with the citizen and Franchisee.

6.1.3 If the dispute is still unresolved, the citizen or Franchisee may appeal to the City Council who shall hear the dispute. The decision of the City Council shall be final and binding.

6.2 Penalties and Procedures. Subject to the requirement of prior notice as set forth in Section 6.3 below, for violations of this ordinance occurring without just cause, the City Administrator may assess penalties against Franchisee as follows:

6.2.1 For failure to adhere to material provisions of this franchise, as defined in Section 6.4.1, Two Hundred Fifty Dollars ($250.00) per day for each provision not fulfilled.

6.2.2 For failure to comply with Oregon Occupational Safety and Health Administration and Oregon Department of Transportation safety requirements or Oregon Department of Environmental Quality rules and regulations, the penalty shall be Two Hundred Fifty Dollars ($250.00) per day, per occurrence.

6.2.3 For failure to comply with any provision of this franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Twenty Five Dollars ($125.00) per day, per occurrence.

6.2.4 For failure to comply with reasonable requests of the City Administrator

related to service, the penalty shall be One hundred Dollars ($100.00) per day per request.

6.3 Procedure for Imposition of Penalties.

6.3.1 Whenever the City Administrator finds that Franchisee has violated one (1) or more terms, conditions or provisions of this franchise, a written notice, or a verbal notice followed by a written notice, shall be given to Franchisee informing it of such violation or liability. If the violation concerns requirements mandated by the Oregon Occupational Health and Safety Administration or the Oregon Department of Environmental Quality, a verbal notice followed by a written notice may be given. For these safety or public health violations, Franchisee shall have 24 hours from notification to correct the violation. For all other violations and liabilities the written notice shall describe in reasonable detail the specific violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have ten (10) days subsequent to receipt of the notice in which to correct the violation. Franchisee may, within five (5) days of receipt of notice, notify the City Administrator that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Franchisee to the City Administrator shall specify with particularity the matters disputed by Franchisee.

6.3.2 The City Council shall hear Franchisee's dispute at its next regularly or specially scheduled meeting. The Council shall supplement its decision with written findings of fact.

6.3.3 If after hearing the dispute the claim is upheld by the Council, Franchisee shall have ten (10) days from such a determination to remedy the violation or failure. Penalties shall accrue from time of initial notification until such time as the violation or failure is resolved to the satisfaction of the City Administrator.

6.3.4 Franchisee shall be liable for full payment of all penalties imposed under this section.

6.4 City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the Council reserves the right to revoke, terminate, or cancel this franchise, and all rights and privileges pertaining thereto, in the event that:

6.4.1 Franchisee violates any of the following provisions of this franchise which are deemed to be material to the performance of the franchise, and fails to cure such violation in accordance with Section 6.3:

Standards for Collection and Disposal of Solid Waste and Recyclable Materials (Section 3)

Compensation (Section 4)
Insurance (Section 5)
Assignment or Sale of Franchise (Section 8)

6.4.2 Franchisee practices any fraud upon the City or customer.

6.4.3 Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

6.4.4 Franchisee misrepresents a material fact in the negotiation of, or renegotiation of, or renewal of, the franchise.

6.4.5 After conducting a public hearing and documenting in findings of fact that it is in the best interest of the public to do so.

6.5 Enforcement.

6.5.1 The City Administrator shall have the right to observe and inspect all aspects of collection operations, facilities, services, and records which are subject to the provisions of this franchise, to insure compliance.

6.5.2 If Franchisee at any time fails to promptly and fully comply with any obligation of this agreement after receiving a written notice and a reasonable opportunity to comply, the City Administrator may elect to perform the obligation at the expense of Franchisee.

6.5.3 If Franchisee defaults in any of the terms required to be performed by it under the terms of this franchise, and the default continues for ten (10) days after written notification by the City Administrator, this franchise may, at the option of the Council, become null and void.

6.5.4 The City Administrator reserves the right to make such further regulations as may be deemed necessary to protect the interests, safety, welfare and property of the public and carry out purposes stated in Section 3 of this franchise agreement. The City Administrator or Franchisee may propose amendments to this franchise. Proposals shall be in writing and shall be afforded an adequate review process. After review of the proposed amendments to the franchise, the Council may adopt the amendments.

6.5.5 All remedies and penalties under this franchise agreement, including termination, are cumulative, and the recovery or enforcement of one is not a waiver or a bar to the recovery or enforcement or any other recovery, remedy or penalty. In addition, the remedies and penalties set out in this ordinance are not exclusive, and the City reserves the right to enforce the penal provisions of any other ordinance, statute or regulation, and to avail itself of any all remedies available at law or in equity. Failure to avail itself of any remedy shall not be construed as a waiver of that remedy. Specific waiver of any right by the City for a particular breach shall not constitute a general waiver of the City's right to seek remedies for any other breach, including a repetition of the waived breach.

6.6 Non-enforcement by the City. Franchisee shall not be relieved of its obligation to comply with any of the provisions of this franchise by reason of any failure of the City

Administrator to enforce prompt compliance.

6.7 Written Notice. All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when a registered or certified mail receipt is returned indicating delivery as follows:

If to the City: City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071
Attn: Mary Tennant, City Recorder

If to Franchisee: United Disposal Service, Inc
P.O. Box 608
Woodburn, Oregon 97071
Attn: Robin Murbach, General Manager

Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

Section 7 - Public Responsibilities

7.1 Excluded Waste. No person shall place hazardous wastes or excluded waste for collection or disposal by Franchisee at the curbside. Hazardous waste and excluded waste shall only be disposed at collection events for this specific purpose.

7.2 Accumulation of Waste. No person shall accumulate or store waste that is unsightly or in violation of the City's nuisance ordinance, or in violation of regulations of the Oregon Environmental Quality Commission.

7.3 Approved Receptacles. No customer shall use any waste collection receptacle unless it is supplied by or approved by Franchisee.

7.4 Safe Loading Requirements. No stationary compactor, can, cart or container for residential, commercial or industrial use shall exceed the safe loading requirements designated by Franchisee.

7.5 Access to Receptacle. No receptacle shall be located behind any locked or latched gate or inside of any building or structure unless authorized by Franchisee. No person shall block the access to a receptacle.

7.6 Safe Access. Each customer shall provide safe access to the solid waste or solid waste receptacle without hazard or risk to Franchisee.

7.7 Can/Cart Placement. Placement of cans/carts must be within three (3) feet of curb but shall not restrict access to bicycle lanes or sidewalks and shall not be

blocked by vehicles or other items. Items not for collection must be at least three (3) feet from cans/carts. Placement of cans/carts is limited to a time period of 24 hours prior to pick-up and 24 hours after pick-up. Cans/carts within alleys shall be placed to accommodate collection vehicles.

7.8 Clean Cans/Carts and Surrounding Areas. Generators or producers of waste shall clean cans/carts and shall keep the area around cans/carts and containers free of accumulated wastes.

7.9 Removal of Solid Waste Prohibited. No person, other than the person producing the materials contained therein, or an officer, employee or permittee of the

City, or an employee of the Franchisee shall interfere with any solid waste receptacle, compact the contents of a receptacle, or remove any such receptacle or its contents from the location where the same has been placed by the person so producing the contents of said container. This subsection does not apply to the purchase of materials for fair market value as exempted by Section 2, 2.6 of this ordinance.

7.10 Collection of Solid Waste Prohibited. No person shall remove the lid from any solid waste receptacle, nor enter into such solid waste receptacle**,** nor shall any person collect, molest, compact or scatter solid waste placed out for collection and resource recovery, except the person so producing the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchisee.

7.11 Disposal of Unauthorized Solid Waste Prohibited. No unauthorized person shall remove the lid from or interfere with any solid waste receptacle to deposit solid waste into such receptacle.

7.12 Stationary Compactor. No person shall install a stationary compacting device for handling of solid wastes unless it complies with all applicable federal, state, and local laws and regulations. Franchisee shall not service any such device unless these requirements are adhered to at all times.

7.13 Train System. No person shall install or operate a "train system" for the purpose of solid waste collection under this franchise agreement.

7.14 Penalties. In addition to, and not in lieu of any other available legal remedies, a violation of sections 7.1, 7.2, 7.6, 7.8, 7.9, 7.10, 7.11, or 7.12 of this Ordinance constitutes a Class 2 Civil Infraction, which shall be processed according to the procedures contained in the Woodburn Infraction Ordinance. Each day of continued violation is a separate offense and is separately punishable, but may be joined in a single prosecution.

Section 8 – Miscellaneous

8.1 Transfer of Ownership or Control

8.1.1 This franchise shall not be sold, assigned, transferred, leased or disposed of either in whole or in part, in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld.

8.1.2 Franchisee shall promptly notify the City of any actual or proposed change in or transfer of, or acquisition by any other party of control of the Franchisee. The word "control" as used herein is not limited to majority stockholders, but includes actual

working control in whatever manner exercised. Every change, transfer or acquisition of control of the Franchisee shall make this Franchise subject to cancellation unless and until the City Council has consented thereto.

8.1.3 The parties to the sale or transfer of this franchise agreement shall make a written request to the City Council for its approval and furnish all information reasonably required for City Council consideration.

8.1.4 The City Council's approval shall be based upon the financial responsibility of the party whom the franchise is proposing for sale, assignment or transfer. In reviewing a request for sale or transfer, the City Council may inquire into tthe financial capability, technical ability, legal qualifications, demonstrated ability, and experience of the prospective controlling party or transferee to comply with the terms of the franchise as determined by the City, and must agree to comply with all provisions of the franchise agreement.

8.1.5 The City shall be deemed to have approved the proposed transfer or assignment in the event that its decision is not communicated in writing to the franchisee within 90 days following receipt of written notice of the proposed transfer.

8.1.6 Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City Council, Franchisee shall file with the City a copy of the deed, Agreement, lease, bill of sale, stock power or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Franchisee and the transferee.

8.2 <u>Performance Bond</u>. As part of any assignment or transfer of franchise, as provided in Subsection 8.1, Franchisee shall provide a performance bound in the a form acceptable to the City, in the amount of $1,000,000 with a surety licensed to do business in the State of Oregon conditioned upon the full and faithful performance of this franchise agreement and franchise and this chapter.

8.3 <u>Change of Law; Amendment of Franchise Agreement</u>.

8.3.1. It is the intent of the parties that this Agreement may be amended from time to time to conform to any changes in the controlling federal or state law or other changes material to this agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments.

8.3.2 This Agreement may be amended or terminated by the mutual consent of the parties and their successors-in interest.

8.3.3 To the extent any lawful City rule, ordinance or regulation is adopted on a jurisdiction-wide basis and is generally imposed on similarly situated persons or entities, the rule, ordinance or regulation shall apply without need for amendment of this

Agreement. City shall provide Franchisee notice of any such change in law prior to its adoption.

8.4 Severability and Constitutionality. If any portion or phrase of this ordinance is for any reason held invalid or declared unconstitutional by any court, such portion shall be deemed a separate and independent provision; and such holding shall not affect the constitutionality of the remaining portion hereof. The council hereby declares that it would have passed this ordinance and each portion and phrase hereof, irrespective of the fact that any one (1) or more portions or phrases be declared illegal, invalid or unconstitutional. If, for any reason, the franchise fee under Section 5 of this ordinance is invalidated or amended by the act of any court or governmental agency, the City Administrator may either renegotiate the compensation section of this agreement or adopt the highest reasonable franchise fee allowed by such court or other governmental agency as the franchise fee charged by this ordinance.

8.5 Continuity of Service Mandatory. Upon expiration or the termination of this franchise, the City Administrator may require Franchisee to continue to operate the system for an extended period of time, not to exceed twelve (12) months. Franchisee shall, as trustee for its successor in interest, continue to operate under the terms and conditions of this franchise. In the event Franchisee does not so operate, the City Administrator may take such steps as deemed necessary to assure continued service to subscribers. Costs associated with such actions shall be the sole responsibility of Franchisee.

8.6 Rules of Construction. This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

8.6.1 The singular may include the plural number, and the plural may include the singular number.

8.6.2 "May" is permissive and "shall" is mandatory.

8.7 Calculation of Time. Time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time unless stipulated otherwise in this agreement. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

8.8 Repeal; Effective Date. This ordinance shall repeal Ordinance 1641. If this ordinance is void for any reason, Ordinance 1641 shall remain repealed in its entirety. This ordinance shall be in full force and effect as of the date indicated below, but this ordinance shall be void unless Franchisee files with the City Recorder, within 30 days, Franchisee's unconditional written acceptance of the terms, conditions, and obligations to be complied with or performed by it under this ordinance.

Passed by the Council and approved by the Mayor November 25, 2009

ORDINANCE NO. 2469

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO LIGHTSPEED NETWORKS, INC. TO OCCUPY CERTAIN RIGHTS-OF-WAY WITHIN THE CITY OF WOODBURN AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. <u>Franchise Grant</u>.

A. Subject to the terms and conditions contained herein, the City of Woodburn does hereby grant to Lightspeed Networks, Inc., (hereinafter "Grantee") a telecommunications franchise to locate its facilities within the rights-of-way of the City, as shown on Exhibit "A" and described in Grantee's application for a franchise.

B. Such grant is subject to all of the laws and ordinances of the City of Woodburn and to applicable state and federal law. Except as otherwise specifically provided by this Franchise Ordinance, all requirements and conditions of Ordinance 2284, the Telecommunications Franchise Ordinance, shall apply to Franchisee.

C. The scope of this grant allows the installation of facilities by Grantee in the City's rights-of-way as depicted in Exhibit "A". Such facilities shall be used by Grantee to provide telecommunications services consistent with the authority granted by the OPUC. In the event either the location of Grantee's facilities or the nature of the services provided is proposed for modification, Grantee shall be required to obtain an additional or revised franchise from the City.

Section 2. <u>Construction Standards.</u>

A. The construction standards of the City of Woodburn, as well as any other applicable construction standards in existence at the time of this franchise grant or hereafter enacted, shall apply to all work performed by the Grantee in City rights-of-way.

B. The Grantee's facilities shall not interfere in any way with any of the City's communications or other public and city-permitted facilities, including other franchised facilities, either as installed or during operation. The Grantee will compensate the provider of power directly for the cost of power consumed in

support of Grantee's facilities, and shall hold the City completely harmless from any power cost.

C. The Grantee shall locate below the surface of the ground all wiring and physical improvements within City rights-of-way, unless it is physically impossible to do so. Placement of any improvements above ground, or on poles shall only be with the prior review and approval of the City.

D. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall independently obtain prior written approval from the owner and/or operator of the poles on which its facilities shall be placed. Upon request, Grantee shall provide copies of such written approvals for City review.

E. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall undertake all wiring and physical improvements required by the owner of each pole to which its facilities are to be attached. In the case of City-owned poles or fixtures, such work shall be performed subject to the approval of the City Engineer or his designee.

Section 3. **Franchise Fee.** Subject to any restrictions imposed by federal law, the franchise fee payable to the City shall be 7% (seven percent) of the Grantee's gross revenues earned within the corporate limits of the City. Notwithstanding the type of telecommunications services provided, Grantee shall pay a minimum annual franchise fee of $1,000 for the privilege of using the City's rights-of-way. Franchise fees shall be payable quarterly, on or before April 30, July 31, October 31 and January 31, for the preceding calendar quarter. Payments made more than ten calendar days beyond the due date shall bear interest at the rate of 9% per annum. With each franchise fee payment, the Grantee shall furnish a sworn statement setting forth the amount and calculation of the payment. The statement shall detail the revenues received by the Grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenues claimed by the Grantee in calculating the franchise fee.

Section 4. **Audit.** The City shall have the right to annually audit the books and records of the Grantee to verify compliance with the terms and conditions of this franchise. At the City's request, the Grantee shall provide the City's agents access to the Grantee's books and records, as necessary, to conduct a thorough audit.

Section 5. **Term.** The term of this franchise shall be five (5) years. This franchise shall be subject to one automatic renewal on the same terms and conditions for an additional period of five (5) years unless notice is given by either party 180 days in advance of the expiration of the franchise of its intention to

terminate or renegotiate the franchise. This franchise shall be effective upon the date of Grantee's written acceptance of this grant.

Section 6. **Indemnification.** To the extent permitted by law, the Grantee shall 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.

Section 7. **Acceptance.** The grant of franchise herein is conditioned upon Grantee's acceptance of all terms and conditions hereof in writing in a form acceptable to the City.

Section 8. **[**Emergency Clause.]

Passed by Council August 9, 2010, and approved by the Mayor August 11, 2010.

ORDINANCE NO. 2500

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO WAVEDIVISION VII, LLC D/B/A WAVE BROADBAND AND DECLARING AN EMERGENCY

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City of Woodburn hereby grants to WaveDivision VII, LLC d/b/a Wave Broadband a cable television franchise (the "Franchise") under the authority of and in accordance with the Woodburn City Charter, applicable city ordinances, Oregon state law, the Cable Communications Policy Act of 1984, as amended by the Cable Communications Policy Act of 1992 and the Telecommunications Act of 1996.

Section 2. The terms and conditions of the Franchise are memorialized in the City of Woodburn Cable Franchise Agreement, which is affixed to this ordinance as Attachment "A" and is by this reference incorporated herein.

Section 3. The duration of the Franchise shall be ten (10) years subject to all of the terms and conditions provided in the Woodburn Cable Franchise Agreement.

Section 4. The Franchise shall replace the Existing Franchise granted pursuant to Ordinance 2307 and the terms and conditions of the prior franchise shall have no further legal force and effect.

Section 5. [Emergency Clause]

Passed by the Council March 11, 2013 and approved by the Mayor March 13, 2013.

Attachment A.

Ord 2500 - WaveDivision Francl

ORDINANCE NO. 2517

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO ZAYO GROUP TO OCCUPY CERTAIN RIGHTS-OF-WAY WITHIN THE CITY OF WOODBURN

[Whereas clauses]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. <u>Franchise Grant</u>.

A. Subject to the terms and conditions contained herein, the City of Woodburn does hereby grant to Zayo Group, (hereinafter "Grantee") a telecommunications franchise to locate its facilities within the rights-of-way of the City, as shown on Exhibit "A" and described in Grantee's application for a franchise.

B. Such grant is subject to all of the laws and ordinances of the City of Woodburn and to applicable state and federal law.

C. The scope of this grant allows the installation of facilities by Grantee in the City's rights-of-way as depicted in Exhibit "A". Such facilities shall be used by Grantee to provide telecommunications services consistent with the authority granted by the OPUC. In the event either the location of Grantee's facilities or the nature of the services provided is proposed for modification, Grantee shall be required to obtain an additional or revised franchise from the City.

Section 2. <u>Construction Standards.</u>

A. The construction standards of the City of Woodburn, as well as any other applicable construction standards in existence at the time of this franchise grant or hereafter enacted, shall apply to all work performed by the Grantee in City rights-of-way.

B. The Grantee's facilities shall not interfere in any way with any of the City's communications or other public and city-permitted facilities, including other franchised facilities, either as installed or during operation. The Grantee will compensate the provider of power directly for the cost of power consumed in support of Grantee's facilities, and shall hold the City completely harmless from any power cost.

C. The Grantee shall locate below the surface of the ground all wiring and physical improvements within City rights-of-way, unless it is physically impossible to do so. Placement of any improvements above ground, or on poles shall only be with the prior review and approval of the City.

D. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall independently obtain prior written approval from the owner and/or operator of the poles on which its facilities shall be placed. Upon request, Grantee shall provide copies of such written approvals for City review.

E. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall undertake all wiring and physical improvements required by the owner of each pole to which its facilities are to be attached. In the case of City-owned poles or fixtures, such work shall be performed subject to the approval of the City Engineer or his designee.

Section 3. **Franchise Fee.** The franchise fee payable to the City shall be 7% (seven percent) of the Grantee's gross revenues earned within the corporate limits of the City. Notwithstanding the type of telecommunications services provided, Grantee shall pay a minimum annual franchise fee of $1,000 for the privilege of using the City's rights-of-way. Franchise fees shall be payable quarterly, on or before April 30, July 31, October 31 and January 31, for the preceding calendar quarter. Payments made more than ten calendar days beyond the due date shall bear interest at the rate of 9% per annum.

Section 4. **Audit.** The City shall have the right to annually audit the books and records of the Grantee to verify compliance with the terms and conditions of this franchise. At the City's request, the Grantee shall provide the City's agents access to the Grantee's books and records, as necessary, to conduct a thorough audit.

Section 5. **Term.** The term of this franchise shall be five (5) years. This franchise shall be subject to one automatic renewal on the same terms and conditions for an additional period of five (5) years unless notice is given by either party 180 days in advance of the expiration of the franchise of its intention to terminate or renegotiate the franchise. This franchise shall be effective upon the date of Grantee's written acceptance of this grant.

Section 6. **Indemnification.** To the extent permitted by law, the Grantee shall 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.

Section 7. **Acceptance.** The grant of franchise herein is conditioned upon Grantee's acceptance of all terms and conditions hereof in writing in a form acceptable to the City.

Passed by the Council on March 10, 2014 and approved by the Mayor March 12, 2014

Exhibit A -

Woodburn Development Ordinance

WDO

Adopted by Ordinance 2313 on April 9, 2002

Acknowledged December 22, 2006

Amended by Ordinance 2423 on July 28, 2007

Amended by Ordinance 2446 on September 8, 2008

Amended by Ordinance 2465 on March 24, 2010

Amended by Ordinance 2473 on December 13, 2010

Amended by Ordinance 2480 on September 26, 2011

Amended by Ordinance 2492 on September 10, 2012

Amended by Ordinance 2509 on August 12, 2013

Amended by Ordinance 2510 on September 23, 2013

Amended by Ordinance 2520 on July 28, 2014

Amended by Ordinance 2526 on February 9, 2015

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ORGANIZATION AND STRUCTURE

1.01 Structure

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1.01.05 Relationship to Other Laws and Private Agreements
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1.01.07 Severability

1.01.01 Title and Purpose

A. This ordinance may be referred to as the "Woodburn Development Ordinance" or by the abbreviation "WDO".

B. The Woodburn Development Ordinance is intended to:

1. Implement the Woodburn Comprehensive Plan in accordance with Oregon's statewide planning goals and statutes;
2. Facilitate adequate provisions for transportation, water, sewage, drainage, schools, parks and other facilities;
3. Provide adequate light, air, open space, and convenience of access;
4. Enhance safety from fire, flood and other dangers;
5. Protect environmental resources and natural systems;
6. Promote the health, safety, peace, prosperity, and general welfare of the City's residents and visitors;
7. Promote a logical growth pattern within the City and the economic extension of public services and facilities;
8. Encourage compatible and beneficial uses of land throughout the City by segregating uses to minimize incompatibilities;
9. Provide for a variety of housing types and promote affordable housing;
10. Preserve the character of the City by enhancing the aesthetic quality of the built environment and acknowledging the City's historic architecture;
11. Provide avenues for residents of the City to participate in the establishment and amendment of land use regulations and plans;
12. Provide residents of the City with the opportunity to participate in development decisions;
13. Provide a process whereby property may be reclassified for other suitable uses consistent with the Comprehensive Plan and changing conditions and community values;

14. Protect the rights of property owners; and
15. Provide effective means of administrative relief for situations where the regulations impose an excessive burden on a particular property.

1.01.02 Annual Review of the WDO

The Director should maintain a list of potential modifications of the WDO, due to new state or federal laws and rules, case law precedents, scrivener errors, interpretation, or other changes in circumstance. The Director should report these matters to the City Council at its first regular meeting in the month of November, so that the Council may consider initiating appropriate measures to modify the WDO.

1.01.03 Application and Construction of Regulations

A. The provisions of the WDO shall be considered the minimum regulations adopted to promote the public health, safety and general welfare; and shall apply uniformly to each case or kind of use, structure or land unless varied or otherwise conditioned, as allowed in the WDO.

B. A period of time to perform expressed in days shall mean consecutive "calendar days" unless otherwise defined. The number of calendar days is counted beginning with the first date after the date or event from which the period begins, and ending at 5 o'clock p.m. on the last day of the number of days stated, unless the last day is not a City business day, in which case the last day of the period shall be the first City business day following the last of the consecutive calendar days.

1.01.04 Official Actions Shall Comply with the WDO

All officials, contractor-officials, and employees of the City vested with authority to issue permits or grant approvals shall adhere to and require conformance with the WDO, and shall issue no permit or grant approval for any development or use which fails to comply with conditions or standards imposed to carry out the WDO.

1.01.05 Relationship to Other Laws and Private Agreements

It is not the intent of the WDO to interfere with, abrogate or annul any easement, covenant or agreement between parties; provided, however, that where the WDO imposes greater restrictions than those imposed or required by other rules or regulations, the provisions of the WDO shall control.

1.01.06 Prior Approvals and Conditions of Approval

Developments, including subdivisions, partitions, planned unit developments, zone changes, conditional uses, variances, site development review and other development applications for which approvals were granted before the effective date of the WDO, may occur pursuant to such

approvals; except that all subsequent modifications to development approvals shall comply with the WDO.

1.01.07 Severability

If any section, paragraph, subdivision, clause, or sentence of the WDO shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of the WDO.

1.02 Definitions

Note: Terms not defined in this Section have the meaning set forth in the New Oxford American Dictionary, 2010 edition (see Section 4.02.06.B.6.)

Abutting: Touching on the edge or on the line, including at a corner. It shall include the terms adjacent, adjoining and contiguous.

Access: The place, means or way by which pedestrians or vehicles have ingress and egress to and/or from a lot or use.

Accessory Building, Structure or Use: A detached building, structure or use which is incidental and subordinate to, and supports the primary use on, the same premises.

Accommodations:

- Bed and Breakfast Inn: A single-family dwelling with at least one room offered to the general public for lodging on an overnight or weekly basis, with a meal provided.
- Hotel: A building in which rooms are offered to the general public for lodging on an overnight or weekly basis, where the primary entrance is through a lobby or foyer with internal circulation to the rooms.
- Living Unit: A room or suite of rooms, providing living and sleeping facilities for one or more persons where either cooking or eating and/or sanitation facilities are shared. In a rooming and boarding house, each bed rented for compensation is a "Living Unit." Note: Living unit is not synonymous with "dwelling unit."
- Motel: a group of attached or detached buildings, in which more than five rooms are offered to the general public for lodging on an overnight or weekly basis, where the rooms have direct access to the outside without the necessity of passing through the main lobby of a building.
- Rooming and Boarding House: A residential building or portion thereof with guest rooms, providing lodging or lodging and meals, for three or more persons for compensation.

Adjacent: Near, close or bordering but not necessarily contiguous with; adjoining but separated by a right-of-way.

Administrative Body: The City Council, Planning Commission, Design Review Board, or staff member having the jurisdiction to hear and decide proceedings on land use actions.

Alley: A public right-of-way not more than 20 feet wide and not less than 10 feet in width that provides secondary vehicular access to property and intersects with a public street.

Alteration, Structural: Any change in the exterior dimensions of a building, or a change which would affect a supporting member of a building, such as a bearing wall, column, beam or girder.

Anti-Graffiti Surface: Either a preparation applied to the surface area of a wall or fence that is formulated to aid in the removal of unintended paint or other surface markings; or evergreen

vegetation planted directly in front of, or covering, a fence or wall in a way that obscures the visibility of at least 75 percent of any element of each exterior face.

Application: Any request for approval of a development or a legislative amendment to the City's land use regulations, comprehensive plan or related maps.

Approval Criteria and Approval Standards: All standards which must be met in order to approve an application. Depending upon the specific application, approval criteria include standards contained in the Woodburn Development Ordinance, Woodburn Comprehensive Plan and applicable state law.

Articulate/Articulation: The joining and intersecting of walls or building spaces through offsets, projections, overhangs, extensions and similar features.

Berm: A linear mound of soil, a small rise or hill in a landscape which is intended to buffer or visually screen certain features of development, such as parking.

Block: A unit or contiguous units of land bounded by intersecting streets.

Buffer: Landscaping and/or screening between two land uses of differing character to minimize potential conflicts and provide a more aesthetic environment.

Building: Any structure having a roof built for the support, shelter, or enclosure of persons, animals, or property of any kind.

Building Height: The vertical distance above a reference datum measured to the highest point of the coping or flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building. The reference datum shall be selected by either of the following, whichever yields the greater height of building:

1. The elevation of the highest adjoining sidewalk or ground surface within 5-foot horizontal distance of the exterior wall of the building, when such sidewalk or ground surface is not more than 10 feet above the lowest grade (See Figure Figure 1.02A).
2. An elevation 10 feet higher than the lowest grade, when the sidewalk or ground surface described in section 1 above is more than 10 feet above the lowest grade (See Figure Figure 1.02B).

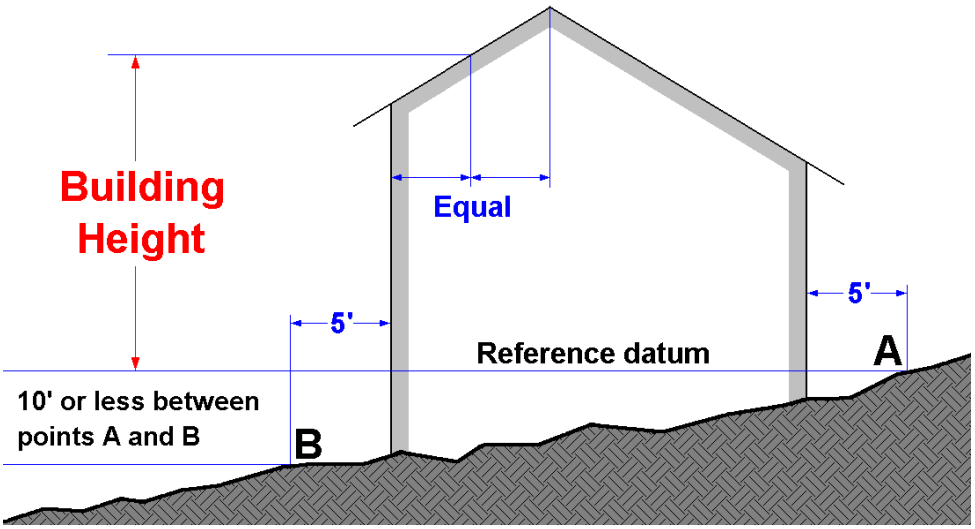


Figure 1.02A – Building Height

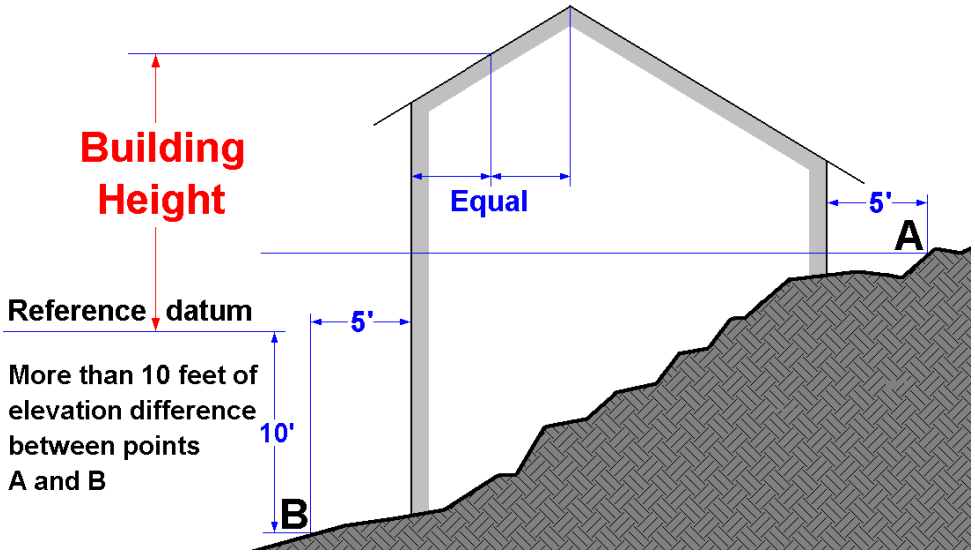


Figure 1.02B – Building Height

Building, Primary: A building within which is conducted the main or principal use of the property.

Cabana: A stationary structure with two or more walls, used in conjunction with a manufactured dwelling to provide additional living space and meant to be moved with the manufactured dwelling.

Caliper: The diameter of a tree measured 6 inches above ground level for trees up to 4 inches in diameter, or 12 inches above ground level for trees 4 inches or more in diameter. Note: A "significant tree" is determined by its diameter measured at 5 feet above ground level, regardless of its caliper.

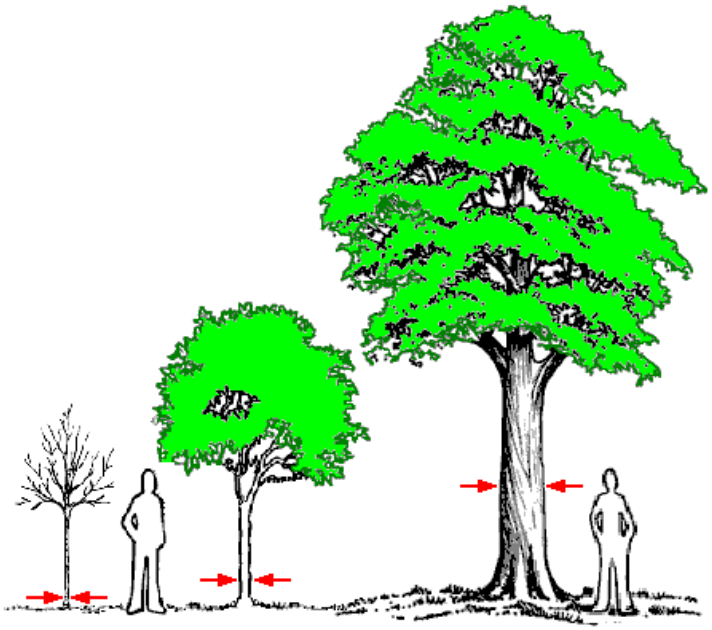


Figure 1.02C – Measurement of Caliper and Significant Tree Diameter

Care services:

- Child Care: The care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part of the 24 hours of the day, in a place other than the child's home, with or without compensation.
- Child Care Facility: A facility that provides child care, including a day nursery, nursery school, day care center, or similar unit operating under any name, but not including:
  - a facility providing care that is primarily group athletic or social activities sponsored by or under the supervision of a church or an organized club or hobby group.
  - a facility operated by a school district or a governmental agency.
  - a facility providing care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other non-work activity.
  - a Child Care Home.
- Child Care Home: A residential facility certified by the Oregon Child Care Division.
- Group Care Facility: A facility that provides residential care, treatment, or training for six or more socially dependent individuals or individuals with physical disabilities or mental retardation or other developmental disabilities or mental, emotional or behavioral disturbances or alcohol or drug dependence. Note: See "Residential Care," Residential Care Facility," "Residential Training Facility," "Residential Treatment Facility," "Training," and "Treatment" in ORS 443.400. Group Care Facility includes what is commonly called an "assisted living facility."
- Group Home: A facility that provides residential care, treatment, or training for five or fewer socially dependent individuals or individuals with physical disabilities or mental retardation or other developmental disabilities or mental, emotional or behavioral disturbances or alcohol or drug dependence. Note: See "Residential Care," Residential

Care Home," "Residential Training Home," "Residential Treatment Home," "Training," and "Treatment" in ORS 443.400. Group Home includes what is commonly called an "assisted living facility" or "adult foster home."

- Nursing Home: A building or portion of a building containing living units and providing inpatient nursing and rehabilitative services. Nursing Home includes "hospice" but does not include "Group Care Facility," "Group Home," or "Hospital."

Carport: A permanent structure consisting of a roof and supports for covering a parking space which is not completely enclosed.

Cemetery: Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including a columbarium, crematory, mausoleum, or mortuary, when operated in conjunction with, and within the boundary of, such cemetery.

Change of Use: A change from one type of use of a building or land to another type of use for uses as defined by the Woodburn Development Ordinance**.**

Church: See "House of Worship."

Community Building: A facility available for public use for meetings, recreation, education.

Condominium: A building or group of buildings, in which separate buildings or portions of buildings are separately owned, while the land on which the building(s) is located is held in a common ownership.

Conforming: In compliance with the current regulations of the Woodburn Development Ordinance**.**

Contiguous: Touching along a boundary or point. Note: see also "abutting" and "adjacent."

Corner Clearance: The distance from an intersection of a street to the nearest driveway. The distance shall be measured along the traveled way of the street connecting the intersecting street and the driveway, starting from the closest edge of the pavement of the intersecting street and ending at the closest edge of pavement of the driveway (See Table 3.04A).

Delivery Service: The delivery of packages and the sale and/or delivery of food and/or beverages.

Density :

- Gross Density or Units per Gross Acre: The number of dwelling units or living units per acre prior to the dedication of public right-of-way; irrevocable easements for private streets or access ways; and private streets in Manufactured Dwelling Parks.
- Net Density or Units per Net Acre: The number of dwelling units or living units per acre based on the land area committed to housing and common, private ownership but excluding public right-of-way, irrevocable easements for private streets or access ways, and private streets in Manufactured Dwelling Parks.

Department: The Department of Economic and Development Services of the City of Woodburn.

Development: A building or grading operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, partitioning or subdividing land, or the creation or termination of an access right.

Development Standard: The requirement of the City with respect to the quality and quantity of an improvement or activity.

Director: The Director of the Department of Economic and Development Services of the City of Woodburn or designee.

Driveway: A private access way to and from a property, a parking space or area, a garage, or a use, intended to allow vehicular ingress and egress but not intended to provide the traffic circulation function of a street.

Dwellings:

- Duplex: A detached building on a single lot containing 2 dwelling units designed exclusively for occupancy by 2 families living independently of each other.
- Dwelling Unit: A building or portion of a building providing complete, independent living facilities for occupancy by one family, including permanent provisions for living, sleeping, eating, cooking and sanitation. Note: "Dwelling unit" is not synonymous with "living unit."
- Medium Density Residential: Any building where the predominant use is multiple-family residential, nursing home, or group care facility.
- Manufactured Dwelling: Any of the following:
    1. Residential trailer: A structure constructed for movement on the public highways which has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.
    2. Mobile home: 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 residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of the Oregon mobile home law in effect at the time of construction.
    3. Manufactured home: 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 residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulation in effect at the time of construction.

    Manufactured dwelling does not mean any building or structure constructed to conform to the State of Oregon Structural Specialty Code or the One and Two Family Dwelling Code adopted pursuant to ORS Chapter 455 or any unit identified as a recreational vehicle by the manufacturer.
- Multiple-Family Dwelling: A building on a single lot containing three or more dwelling units. Note: This definition does not include row houses, where attached single-family dwelling units are located on separate lots.
- Row House: A building containing three or more dwelling units, arranged so that each dwelling unit is located on a separate lot. The building often consists of a series of

houses of similar or identical design, situated side by side and joined by common walls.

- Single-Family Dwelling: A detached building constructed on a single lot, containing one dwelling unit designed exclusively for occupancy by one family.

Employees: All persons, including proprietors, performing work on a premises. For calculating required off-street parking, it shall be the number present during the largest shift or peak season.

Family: An individual or two or more persons related by blood, marriage, legal adoption or guardianship, or a group of not more than five persons (excluding servants) who need not be related by blood or marriage, living together in a dwelling unit. "Family" shall include two or more handicapped persons as defined in the Fair Housing Amendments Act of 1988 living as a single housekeeping unit.

Final Action and Final Decision: The City's final decision on a permit application for which there is either no appeal to another decision-maker within the City, or, if there is the possibility of a local appeal, an appeal was not timely perfected in accordance with the Woodburn Development Ordinance.

Frontage: That portion of a lot which abuts a public street.

Garage: A building, or portion of a building, which is completely enclosed and designed for the storage or parking of a vehicle.

Grade: Adjacent ground elevation is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

Gross Floor Area: The sum of the gross horizontal areas of the several floors of a building, measured from the exterior faces of the exterior wall or from the centerline of walls separating two buildings, but not including:

1. Attic and basement space providing headroom of less than seven feet;
2. Uncovered steps or fire escapes;
3. Private garages, carports, or porches;
4. Accessory water towers or cooling towers;
5. Off-street parking or loading spaces.

Home Occupation: A business or professional activity engaged in by a resident of a dwelling unit as a secondary use of the residence, and in conformance with the provisions of the Woodburn Development Ordinance. Such term does not include the lease or rental of a dwelling unit (See Section 2.02.12).

House of Worship: A church, synagogue, temple, mosque or other permanently located building primarily used for religious worship. A house of worship may also include accessory buildings for related religious activities and one dwelling unit.

Interested Person: With respect to a land use action, any person or organization, or the duly authorized representative of either, having a right of appeal under the Woodburn Development Ordinance.

Kennel: Any lot or premises on which four or more dogs and/or cats over the age four months are kept for sale, lease, boarding or racing.

Landscaping: Areas primarily devoted to the planting and preservation of trees, shrubs, lawn and other organic ground cover, together with other natural or artificial supplements such as watercourses, ponds, fountains, decorative lighting, benches, arbors, gazebos, bridges, rock or stone arrangements, pathways, sculpture, trellises and screens.

Legal Description: The description of a subject property by either metes and bounds or in reference to a lot, or lot and block, number of a recorded subdivision or partition.

Legislative Action: Any final decision of the city that adds to, amends or repeals the City's land use regulations, comprehensive plan or related maps and does not pertain to a particular property or small set of properties.

Loading Space: An on-site space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or material.

Lot: A lot or parcel created by subdivision or partition in compliance with ORS Chapter 92 and applicable zoning and subdivision ordinances, or created by deed or land sale contract recorded before subdivision requirements or partition requirements in the City of Woodburn (April 16, 1963) or for land in Marion County not yet incorporated in the City of Woodburn prior to major partition regulations (August 8, 1962) and minor partition regulations (September 1, 1977), exclusive of units of land created solely to establish a separate property tax account.

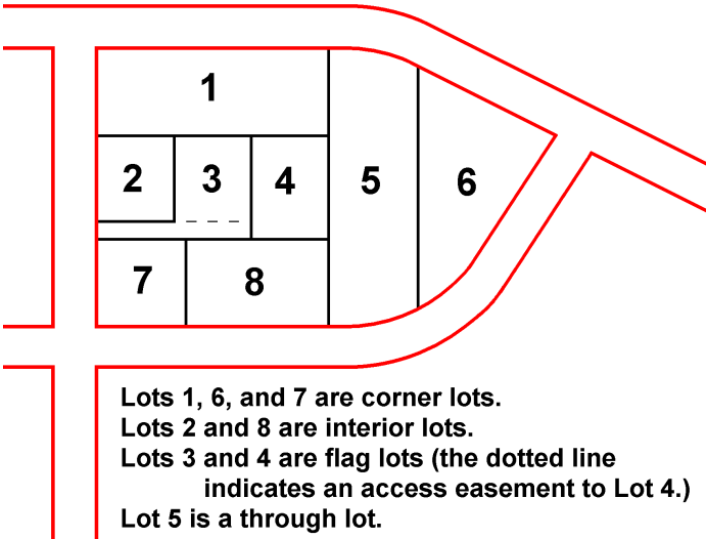


Figure 1.02D – Lot Types

- Corner Lot: A lot abutting two segments of street right-of-way along either, a curvilinear street, or two intersecting streets, where the projection of the two line segments forms an angle of intersection that is no greater than 135 degrees.
- Flag Lot: A lot that is either a) accessed by an easement; or b) accessed by a strip of land; where the width of the driveway access is neither less than, nor exceeds by more than 20 percent, the standards of Table 3.04A.

- Interior Lot: A lot with frontage on a single street.
- Lot, Through: A lot which fronts on two streets which do not intersect along the boundaries of the lot.

Lot Area: The total area of a lot, measured in a horizontal plane, within the boundary lines, excluding dedicated public rights-of-way and recorded irrevocable easements for private streets or driveways.

Lot Coverage: The percentage, or portion, of total lot area covered by primary and/or accessory buildings, including roofed but unenclosed structures, but excluding covered structures less than five feet in height and having less than 20 square feet of gross floor area (such as pet shelters and play houses).

Lot Depth, Average: The horizontal distance measured from the midpoint of the front lot line to the midpoint of the rear lot line.

Lot Line: The property lines forming the exterior boundaries of a lot.

- Front Lot Line:
  1. In the case of an interior lot, a line separating the lot from the street.
  2. In the case of a corner lot, a line separating the lot from the street from the architectural front of the existing or contemplated primary building.
  3. In the case of a flag lot, the lot line which is most nearly parallel to the street that provides access to the interior lot.
- Rear Lot Line:
  1. In the case of a triangular shaped lot, diamond shaped lot, or a trapezoidal lot which is narrowest at the rear and has a distance between the side lot lines at the rear of less than ten feet, the rear line for setback purposes shall be an assumed line within the lot ten feet in length, parallel to and at the maximum distance from the front lot line; or
  2. In any other case, the lot line opposite and most distant from the front lot line.
- Side Lot Line: Any lot line, which is not a front or rear lot line.

Lot Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

Manufactured Dwelling Park: Any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease or use facilities or to offer space free in connection with securing the trade or patronage of such person. The term does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot, if the subdivision was approved pursuant to ORS Chapter 92.

- Park Space: Any area or portion of a manufactured dwelling park, which is designated or used for the placement of one manufactured dwelling and appurtenant facilities.

Mini-Storage Warehouse: An area within an enclosed building or structure used for the storage of personal property for compensation.

Mobile Food Services: A vehicle, trailer, or wagon used for the preparation and/or sale of food

and/or beverages.

Nonconforming Development: Any development which met all applicable development standards imposed by applicable City or County zoning ordinance provisions when the development was established, and which has been maintained in compliance with such standards; but which does not comply with the current development standards of the Woodburn Development Ordinance solely because of the adoption or amendment of the Woodburn Development Ordinance, or because annexation to the City resulted in application of different development standards to the subject property.

Non-final Decision: Any decision by the Director, Planning Commission or Design Review Board which is not a final decision, but is appealable to another decision maker within the City.

Open Space, Common: An area, feature, building or other facility within a development which has been dedicated in common to the ownership within the development, or to the public, specifically for the purpose of providing places for recreation, conservation or landscaping, and which is intended for the use of the residents and property owners of the development.

Open Space, Usable Common: Common open space, the use of which conforms with use and development guidelines specified by the Woodburn Development Ordinance.

Owner: The owner of record of real property, as shown on the latest tax rolls or deed records of the county, or a person who is purchasing a parcel of property under a written sales contract.

Parking Lot or Area: An on-site building, structure, or improved area, other than a street or alley, used for the parking of automobiles and other vehicles.

Partition: Note: Partition is defined in State statute. See ORS 92.010.

Pedestrian Facilities: Improvements which provide for public pedestrian foot traffic, including sidewalks, walkways, crosswalks and other improvements, such as lighting or benches, which provide safe, convenient and attractive walking conditions.

Permit: Any form of approval pertaining to the use of land rendered by the City under the Woodburn Development Ordinance, including subdivisions, partitions, property line adjustments, zone changes and plan amendments, land use, limited land use and expedited land divisions.

Planned Unit Development or PUD: A type of land development which, as a single project, allows for mixed use and design flexibility that is based on a design which is in compliance with the Comprehensive Plan, the uses allowed by underlying zoning, specified exceptions to zoning standards and applicable subdivision, condominium and homeowner association requirements of the Woodburn Development Ordinance.

Plant Unit: A quantity of specified plant materials (See Table 3.06B).

Recreational Vehicle or RV: A vehicle with or without motive power, that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes. The term includes camping trailer, motor home, park trailer, travel trailer, and truck camper.

Recreational Vehicle Park or RV Park: A plot of land upon which two or more recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles belonging to the general public as temporary living quarters for recreational or vacation purposes.

Recycling Center: An area or structure used for the collection and temporary storage of non-putrescible, discarded materials, which will be transported elsewhere to be reused or recycled.

Repair: The reconstruction or renewal of any part of an existing building or structure for the purposes of maintenance. The term shall not include structural alteration.

Review Area: The review area that defines the character of surrounding dwellings and immediately surrounding dwellings shall encompass the five nearest dwellings to the subject lot that are on the same street and that are within 500 feet of the subject lot.

School, Elementary, Middle or High: A public or private institution offering instruction in the several branches of learning and study, in accord with the rules and regulations of the State Department of Education.

Screening: A sight-obscuring fence, architectural wall, or evergreen hedge at least 6 feet in height.

Setback or Setback Line: The minimum distance between a specified line and the foundation or exterior wall of a building or structure, whichever is closer.

1. For interior and corner lots, the distance shall be measured from the abutting property line.
2. In a Manufactured Dwelling Park, setbacks shall be measured from the delineation of a "Park Space."
3. For Interior Flag Lots, setbacks shall be measured from a property line, except in the case of development that abuts a flag lot driveway access easement or strip of land in fee. In that case, the setback shall be measured from the easement line or the property line, whichever is closer to the development.

Note: A setback is the *minimum required distance* between a structure and a lot line, whereas a yard is the *actual area* between a structure and a lot line.

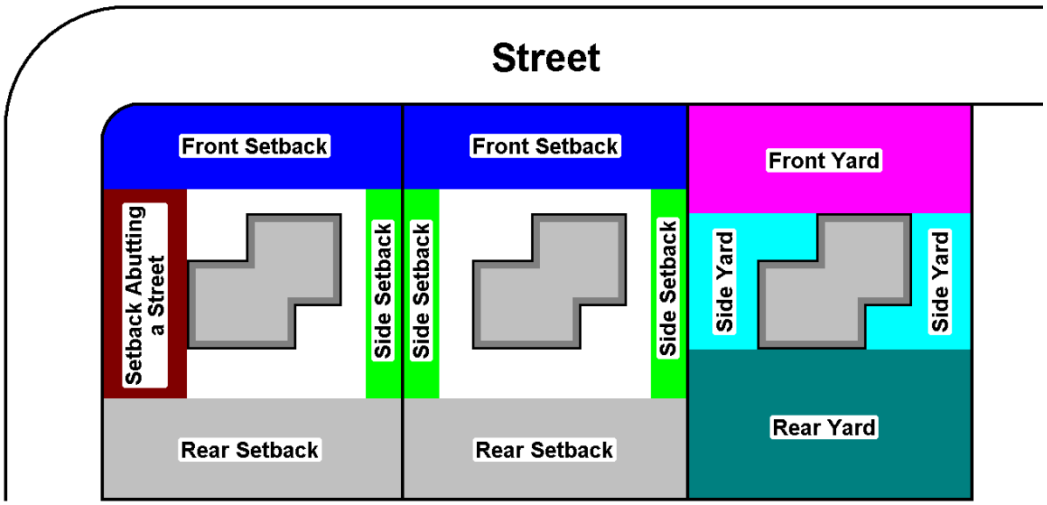


Figure 1.02E – Setbacks and Yards

Setback, Average: For any continuous wall, "average setback" shall be as follows:

1. For a straight wall: The distance derived from dividing the sum of the closest and furthest points of the building wall from the property line by two; or
2. For an articulated wall: The location of a wall where the yard area abutting the property line (accounting for offsets and jogs) is equal to the yard area computed by multiplying the length of the wall by the standard for the allowable average setback.

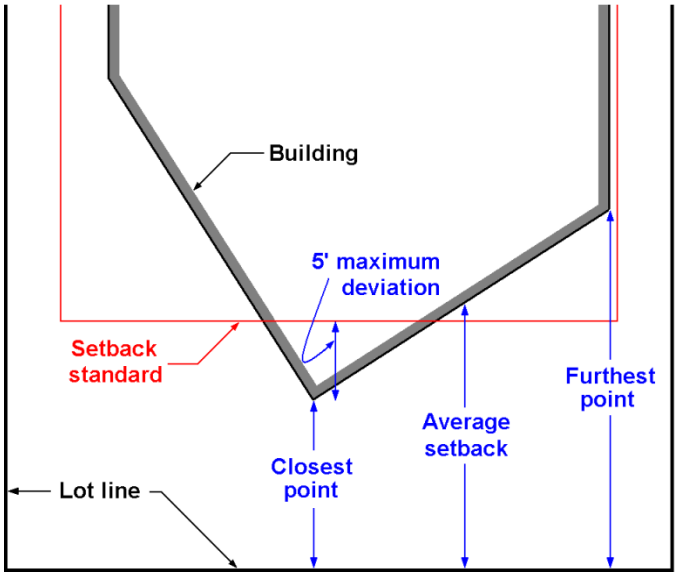


Figure 1.02F – Average Setback for a Straight Wall

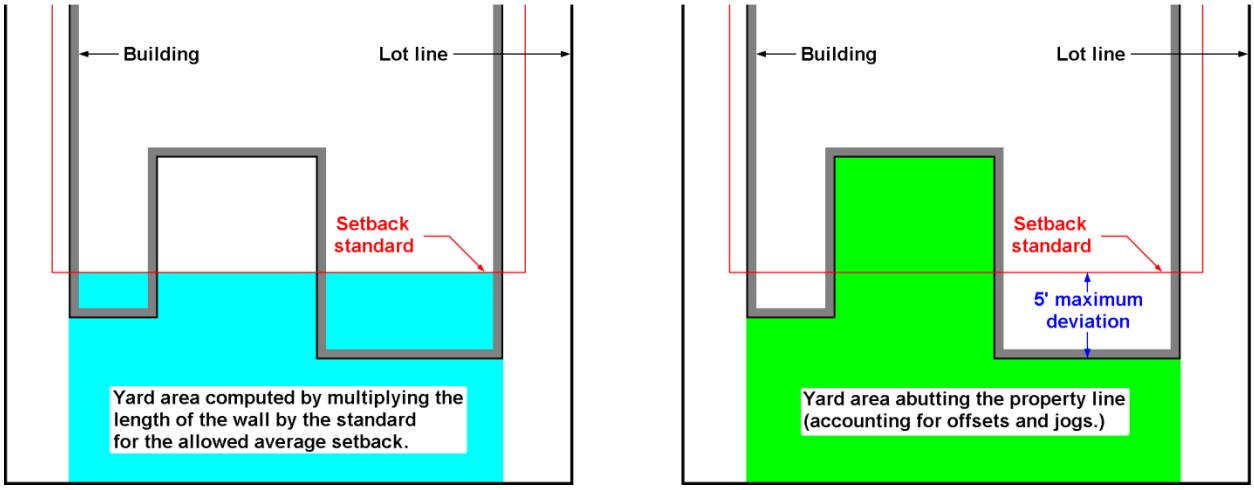


Figure 1.02G – Average Setback for an Articulated Wall

Significant Tree: Any existing, healthy tree 24 inches or more in diameter, measured five feet above ground level (See Section 3.06.07).

Street:

- Boundary Street: That portion, or portions, of a street right-of-way abutting a subject property where existing or proposed development is located within 260 feet of the subject

right-of-way.

- Cul-de-sac: A dead end street having a turnaround area at the dead end.
- Park Street: A private street which affords the principal means of access to abutting individual manufactured dwelling spaces and auxiliary buildings within a manufactured dwelling park.
- Public Street: The entire width between the right-of-way lines of a public way capable of providing the principal means of access to abutting property.

Structural Alteration: Any alteration, addition or removal of any structural member of a building, or structure.

Structure: That which is built or constructed; an edifice or building of any kind; or any piece of work artificially built up or composed of parts joined together in some definite manner, regardless of whether it is wholly or partly above or below grade.

Subdivision: Note: Subdivision is defined in State statute. See ORS 92.010.

Subject Property: The real property or properties that is/are the subject of a permit application.

Use: (noun) An activity or a beneficial purpose for which a building, structure or land is designed, developed or occupied.

- Ancillary Use: An ancillary use is a use that is subsidiary to a predominant use and is either vertically integrated with, or directly linked with, the conduct of a predominant use, or is exclusively for the benefit of occupants, or employees, of a predominant use.
- Nonconforming Use: A use which met all applicable use standards imposed by applicable City or county zoning ordinance provisions when it was established, but which does not comply with the use standards of the Woodburn Development Ordinance solely because of the adoption of or amendment of the Woodburn Development Ordinance, or because annexation to the City resulted in the application of different use standards to the subject property (See also Nonconforming Development).
- Permitted Use: Those land uses permitted in a zoning district that are allowed outright, subject to the standards of the Woodburn Development Ordinance.
- Required Supporting Use: An on-site space or facility necessary to fulfill a dimensional or development standard of the Woodburn Development Ordinance, or a condition of a land use approval. Required supporting uses include access facilities, parking, loading, landscaping, and open space.

Utilities: Water, sanitary sewer, storm drainage, natural gas, electrical, wire communication service, cable television and all persons and companies supplying the same.

Vision Clearance Area: An area defined by the standards within which visual obstructions are regulated for safety purposes (See Section 3.03.06).

Wall, Architectural: A brick, poured concrete, precast concrete, or CMU wall that meets the design standards of Section 3.06.06.

Wetlands: An area that is inundated or saturated by surface water or ground water at a frequency

and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands, Significant: Wetlands which are defined by the criteria adopted by the Department of State Lands (DSL) pursuant to ORS Chapter 197 and are subject to land use regulation.

Yard: An open and unoccupied space on the lot on which a building is situated. Note: A setback is the *minimum required distance* between a structure and a lot line, whereas a yard is the *actual area* between a structure and a lot line. (See Figure 1.02E)

- Buffer Yard: A yard improved with landscaping and/or screening to applicable standards of the Woodburn Development Ordinance, that is located between two land uses of differing character to minimize potential conflicts and to provide a more aesthetic environment.
- Front Yard: The space extending across the full width of a lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel to the nearest point of the foundation or exterior wall of the primary building or structure, whichever is closer.
- Rear Yard: The space extending across the full width of the lot between the rear lot line, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel to the nearest point of the foundation or exterior wall of the primary building or structure, whichever is closer.
- Side Yard: The space extending from the front yard line to the rear yard line, the depth of which is the minimum horizontal distance between the side lot line and a line parallel to the nearest point of the foundation or exterior wall of the primary building or structure, whichever is closer.

1.03 Official Zoning Map

1.03.01 Adoption of the Official Zoning Map
1.03.02 Content of the Official Zoning Map
1.03.03 Depiction of Rights-of-Way
1.03.04 Interpretation of Zoning District Boundaries
1.03.05 Maintenance of the Official Zoning Map by Director
1.03.06 Maintenance of Land Use Decisions by City Recorder

1.03.01 Adoption of the Official Zoning Map

The "Official Zoning Map" of the City of Woodburn is hereby adopted and made a part of the Woodburn Development Ordinance.

1.03.02 Content of the Official Zoning Map

The location and boundaries of all zoning districts, overlay districts and all other graphic information required by the Woodburn Development Ordinance shall be noted on the Official Zoning Map.

1.03.03 Depiction of Rights-of-Way

The Official Zoning Map need not depict zoning for rights-of-way. Regardless of depiction on the Official Zoning Map, zoning districts shall extend to the centerline of abutting rights-of-way.

1.03.04 Interpretation of Zoning District Boundaries

Where there is uncertainty, contradiction or conflict concerning the intended location of zoning district boundary lines, the boundary lines shall be determined by consideration of the following guidelines in a Type IV review. Such a review may be initiated by the owner of the subject property or by the Director:

A. Boundaries indicated as approximately following the center of right-of-way lines of streets, highways, railroad track or alleys shall be construed to be such district boundaries;

B. Boundaries, when not adjacent to public rights-of-way, indicated as approximately following the boundaries of a lot shall be construed as following such boundaries;

C. Boundaries indicated as approximately following the City limits shall be construed as following such boundary;

D. Boundaries indicated as approximately following river, stream and/or drainage channels or basins shall be construed as following the center line of the channel of such river, stream or channel; and

E. Whenever any public right-of-way is lawfully vacated, the lands formerly within the vacated right-of-way shall automatically be subject to the same zoning district designation that is

applicable to lands to which the vacant land attaches.

1.03.05 Maintenance of the Official Zoning Map by Director

The Director shall maintain an up-to-date copy of the Official Zoning Map and, shall have procedures in place to insure against accidental or unauthorized modification or loss of the data.

1.03.06 Maintenance of Land Use Decisions by City Recorder

Pursuant to the Woodburn City Charter, the City Recorder shall maintain an accurate record of all land use decisions made by the City Council and Planning Commission. In the event of a conflict between the Official Zoning Map and a land use decision kept on file by the City Recorder, the land use decision shall control.

1.04 Nonconforming Uses and Development

1.04.01 Applicability
1.04.02 Change or Expansion of an Existing Use with Nonconforming Parking, Loading and/or Landscaping
1.04.03 Change or Expansion of an Existing Use within a Nonconforming Structure
1.04.04 Nonconforming Lots of Record
1.04.05 Repairs and Maintenance
1.04.06 Termination of a Nonconforming Use
1.04.07 Termination of a Use within a Nonconforming Building or Structure

Note: Nonconforming signs are regulated by Section 3.10.11.

1.04.01 Applicability

The provisions of this Section relate exclusively to the use and development standards and conditions imposed by the WDO. Nothing in this Section shall be deemed a waiver, relaxation or abrogation of any provision of any other applicable law, ordinance, or regulation controlling the use or development of buildings, structures or land.

1.04.02 Change or Expansion of an Existing Use with Nonconforming Parking, Loading and/or Landscaping

Any additional parking, loading, landscaping, wall or refuse facility required by the WDO to accommodate a change in use, or expansion of an existing use shall be subject to the following:

A. For applications where the change or expansion increases the required area for parking, loading, or landscaping by 25 percent or more, all parking, loading, landscaping, buffer walls and refuse facilities shall conform to the standards of the WDO.

B. For applications where the change or expansion increases the required area for parking, loading, or landscaping by less than 25 percent, the parking, loading, landscaping, buffer walls and refuse facilities required for the expansion shall conform to the standards of the WDO. The property owner is encouraged, but not required, to bring more of the site into conformity.

1.04.03 Change or Expansion of an Existing Use within a Nonconforming Structure

A. Any expansion or addition to buildings or structures with nonconforming height, setback, density or lot coverage shall not make the development more nonconforming.

B. Any expansion or addition to single family and duplex dwellings that existed before the effective date of the WDO, except those located in the Neighborhood Conservation Overlay District (NCOD), shall be exempt from the architectural guidelines and standards of the WDO.

1.04.04 Nonconforming Lots of Record

Any nonconforming lot of record may be used, provided all standards not involving width or lot area shall comply with the WDO.

1.04.05 Repairs and Maintenance

Except as otherwise provided in this Section, nonconforming structures and development and premises occupied by nonconforming uses may be repaired and maintained, so long as any such repair or maintenance does not in any way increase its nonconformity.

1.04.06 Termination of a Nonconforming Use

The nonconforming use of a building, structure, or land shall be considered terminated if the Director finds that the use of the building, structure or land ceased, for any reason, for a continuous period of one year. Any findings by the Director shall be subject to Section 4.02.06.

1.04.07 Termination of a Use within a Nonconforming Building or Structure

A use dependent upon a nonconforming building or structure (with the exception of a single family dwelling) shall be terminated, as noted, under any one of the following circumstances:

A. Use of a building or structure that is substantially damaged or becomes deteriorated to the extent that it has been declared a "dangerous building or structure" and ordered demolished pursuant to the state Building Code or other federal, state or local regulations, shall be terminated upon such declaration and order;

B. Use of a building or structure which is substantially damaged or deteriorated to the extent that the cost of repairing the building or structure exceeds 60 percent of its replacement cost shall be terminated upon the date of such damage or deterioration. The replacement cost shall be established by the Building Official assuming new materials and compliance with the state building code; or

C. Use of a building or structure which is damaged or deteriorated less than 60 percent shall be terminated where permits and full reconstruction has not been initiated within one year of the preparation of a restoration estimate. The restoration cost shall be estimated by a registered engineer or architect assuming new materials and compliance with the state building code.

1.05 Planning Commission

1.05.01 Composition, Terms and Vacancies
1.05.02 Organization of the Commission
1.05.03 Functions and Duties of the Commission

1.05.01 Composition, Terms and Vacancies

A. Creation of the Commission

1. The Woodburn Planning Commission as created and organized pursuant to Ordinance 1807, is hereby recreated and continued as provided herein.
2. The Commission shall have the duties and powers set forth in this Section and such further and additional powers and duties conferred by the constitutions and laws of the United States and the State of Oregon, the Charter, Ordinances and Resolutions of the City of Woodburn, and as directed by the City Council.
3. The Commission shall act as the Design Review Board under the WDO except where the City Council has acted by resolution pursuant to Section 1.06.01 to appoint a Design Review Board.

B. Composition of the Commission

1. The Commission shall consist of a total of seven members appointed by the Mayor to a full or unexpired term, and confirmed by the City Council. Any vacancy in the Commission shall be filled by appointment by the Mayor with the consent of the City Council for the unexpired portion of the term.
2. All members of the Commission shall be legal residents of the City of Woodburn, with the exception of one member, who may reside outside the City.
3. No more than one member shall be engaged principally in the buying, selling, or developing of real estate for profit as an individual, or as a member of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than one member shall be engaged in the same kind of business, trade or profession.

C. Terms of Office

1. The terms of office of each Commissioner shall be four years, or until a successor is appointed and qualified. The terms of the Commissioners shall be staggered so that not more than three members' terms of office will expire in the same year. The terms of office shall expire at midnight on December 31.
2. Commission members shall be installed at the first regular meeting of the Commission following the expiration of a term or vacancy, and their confirmation by the City Council. Installation shall be completed after an oath or affirmation to uphold the Constitutions of the United States and the State of Oregon and impartially perform the duties of the office to best of their ability.

3. The Council may remove a Commissioner, after hearing, for misconduct or nonperformance of duty.

D. Compensation

Members of the Commission shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

1.05.02 Organization of the Commission

A. Officers

1. The Commission shall elect a Chair and a Vice Chair. The terms of office shall comply with the rules and regulations of the Commission and City Council.
2. The Director shall serve as Secretary for the Commission. The Secretary, supported by other City staff, shall provide notice of public meetings and public hearings, and keep minutes of all proceedings of the Commission in accordance with state law and City ordinances.

B. Meetings

1. Four members of the Commission shall constitute a quorum.
2. The regular meeting place of the Commission shall be at the City Hall.
3. The Commission may establish rules to conduct its business consistent with the laws of the State of Oregon and with the Charter and Ordinances of the City of Woodburn.

1.05.03 Functions and Duties of the Commission

A. General Responsibilities for Recommendations to the City Council and Others

Except as otherwise provided by the City Council, the Commission shall have the power to make recommendations to the City Council and to all other public authorities regarding the following:

1. The laying out, widening, extending, and locating of public thoroughfares, parking of vehicles and relief of traffic congestion;
2. Betterment of housing and sanitation conditions;
3. Establishment of zones or districts limiting the use, height, area and bulk and other characteristics of buildings and structures related to land development;
4. Protection and assurance of access incident to solar radiation;
5. Protection and assurance of access to wind for potential future electrical generation or mechanical application;
6. Plans for regulating future growth, development and beautification of the City in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the City and its inhabitants sanitation, proper service of public utilities and

telecommunications utilities, including appropriate public incentives for overall energy conservation and transportation facilities;

7. Plans for development and regulation of industrial and economic needs of the community, in respect to industrial pursuits;
8. Economic surveys of the present and potential needs of the City;
9. Needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

B. Recommendations on Planning and Zoning

The Commission shall make written findings and recommendations to the City Council on all proposed amendments to the Comprehensive Plan; proposed or revised ordinances relating to the regulation of land use; all types of land use applications specified for Commission review by the WDO; and all other matters as directed by the City Council after holding any prescribed public hearing. The Commission may also hold public hearings and make recommendations to the Council on any other matter that relates to the Commission's powers and duties.

C. Review and Tentative Approval

The Commission shall have the duty and power to review and tentatively approve all Type III and Type IV applications, subject to review or appeal to the City Council.

D. Other Duties of the Commission

The Commission shall have the authority to exercise any and all powers, functions, and authority delegated to, or conferred upon, the Commission by the laws of Oregon, the Charter of the City of Woodburn, the WDO, or any other ordinance or resolution of the City of Woodburn.

1.06 Design Review Board

1.06.01 Composition, Terms and Vacancies
1.06.02 Organization of the Board
1.06.03 Functions and Duties of the Board

1.06.01 Composition, Terms and Vacancies

A. Creation of the Board

1. The City Council may, by resolution, create or dissolve a Design Review Board, which shall have the functions, duties and powers set forth in this Section. Until a Design Review Board is created, the functions, duties and powers set forth in this Section are vested in the Planning Commission.
2. The Board shall have the functions and duties and powers set forth in this Section and such further and additional functions and duties as may be conferred upon it by the Charter, Ordinances and Resolutions of the City of Woodburn, and as directed by the City Council.

B. Composition of the Board

1. The Board shall consist of a total of five members, appointed by the Mayor to a full or unexpired term and confirmed by the City Council.
2. Voting membership of the Board shall include at least three design professionals or persons with experience and/or knowledge of design. No more than one voting member shall be engaged in the same kind of business, trade or profession.

C. Terms of Office

1. The terms of office of the initially appointed members shall run as follows: two members until January 1 of the year that commences one year following their initial appointment and three members until January 1 of the year that commences two years following their initial appointment. The Council shall determine by lot the terms of the initial members.
2. The term of office of a member, other than those initially appointed, shall be for staggered terms of four years, or until a successor is appointed. The terms of office shall expire at midnight on December 31.
3. Board members shall be installed at the first regular meeting of the Board following the expiration of a term or vacancy.
4. The Council may remove a Board member, after hearing, for misconduct or nonperformance of duty.

D. Compensation

Members of the Board may receive compensation for their services as shall be determined by City Council and may be reimbursed for expenses incurred in the performance of their duties.

1.06.02 Organization of the Board

A. Officers

1. The Board shall elect a Chair and a Vice Chair. The terms of office shall comply with the rules and regulations of the Board.
2. The Director shall serve as Secretary of the Board. The Secretary, supported by other City staff, shall provide notice of public meetings and public hearings, and keep an accurate record of all proceedings and actions of the Board in accordance with state law and city ordinances.

B. Meetings

1. Three members of the Board shall constitute a quorum.
2. The Board shall have a regular meeting schedule. All meetings of the Board shall be open public meetings. The regular meeting place of the Board shall be at the City Hall.
3. The Board shall establish rules to conduct its business consistent with the laws of the State of Oregon and with the Charter and Ordinances of the City of Woodburn.

1.06.03 Functions and Duties of the Board

It shall be the function and duty of the Board to administer the design review provisions of the WDO that are identified as functions of the Board. It shall be the duty of the Board to make recommendations or decisions with written findings in compliance with the applicable procedures of the WDO.

2.01 General Provisions

Zoning seeks to group like uses together, to separate incompatible uses, and to allow a wide range of land uses in appropriate environments and with appropriate regulations. The zones are depicted on the Official Zoning Map. This Section sets forth the regulations for each zone in the City.

2.01.01 Establishment of Zoning
2.01.02 Zoning Districts
2.01.03 Classification of Uses
2.01.04 Other Use Provisions

2.01.01 Establishment of Zoning

All areas within the corporate limits of the City of Woodburn are divided into distinctive land use categories, as depicted on the Official Zoning Map. The use of the territory within a zoning district shall be limited to the uses specified in the zoning district.

2.01.02 Zoning Districts

The City of Woodburn shall be divided into the following zoning and overlay districts:

A. Residential Zones:
   1. Residential Single Family (RS)
   2. Nodal Single Family Residential (RSN)
   3. Retirement Community Single Family Residential (R1S)
   4. Medium Density Residential (RM)
   5. Nodal Multi-Family Residential (RMN)

B. Commercial Zones
   1. Downtown Development and Conservation (DDC) zone
   2. Commercial General (CG) zone
   3. Commercial Office (CO) zone
   4. Mixed Use Village (MUV) zone
   5. Neighborhood Nodal Commercial (NNC) zone

C. Industrial and Public and Semi-Public Zones
   1. Industrial Park (IP) zone
   2. Light Industrial (IL) zone
   3. Southwest Industrial Reserve (SWIR)

4. Public and Semi-Public (P/SP) zone

D. Overlay Districts

1. Gateway Commercial General Overlay District
2. Interchange Management Area Overlay District
3. Neighborhood Conservation Overlay District
4. Nodal Overlay Districts
5. Riparian Corridor and Wetlands Overlay District
6. Southwest Industrial Reserve

2.01.03 Classification of Uses

A. Within each zone, uses are classified as "permitted," "special," "conditional," "specific conditional" and "accessory." Further, uses are functionally classified by description of the particular activity (such as "site-built single-family dwelling").

B. Where a use is not defined in Section 1.02, the words of this ordinance describing such a use are to be given their ordinarily accepted meaning, except where the context in which they are used clearly indicates otherwise.

C. In many cases, uses are listed under convenient categories. Such titles of subsections do not indicate nor shall they be construed as meaning that they themselves independently designate permitted, special, conditional or accessory uses. They are provided for ease of reference only.

D. The uses listed in each use classification refer to the "predominant use." The term "predominant use" not only describes the principal use but also allows for "ancillary uses" and "required supporting uses." "Predominant use" does not differentiate about the duration of a use, uses of both permanent and temporary nature are considered to be the same.

E. An ancillary use is a use that is subsidiary to a predominant use and is either vertically integrated with, or directly linked with, the conduct of a predominant use, or is exclusively for the benefit of occupants, or employees, of a predominant use.

2.01.04 Other Use Provisions

The Woodburn Development Ordinance (WDO) included standards and procedure for development within the City of Woodburn. All development is subject to the standards of the WDO. The uses authorized in each zone are listed in Sections 2.02, 2.03, 2.04 and 2.06. There are additional standards, including standards for Accessory Uses (Section 2.06), Special Uses (Section 2.07), Conditional Uses (Section 2.08), Streets (Section 3.01), Utilities and Easements (Section 3.02), Setbacks (Section 3.03), Access (Section 3.04), Off-Street Parking and Loading (Section 3.05), Landscaping (Section 3.06), Architectural Design (Section 3.07), and Signs (Section 3.10).

2.02 Residential Zones

A. The City of Woodburn is divided into the following residential zones:

1. The Residential Single Family (RS) zone is intended to establish standard density single-family residential developments (typically 6,000 square foot lots).
2. The Nodal Single Family Residential (RSN) zone provides for row houses (attached single-family homes) and detached single-family homes on smaller lots (typically 4,000 square foot lots).
3. The Retirement Community Single Family Residential (R1S) zone provides small lot residential development for seniors, allowing single-family homes on lots as small as 3,600 square feet.
4. The Medium Density Residential (RM) zone provides for multi-family dwellings and care facilities at up to 16 dwelling units per net acre.
5. The Nodal Multi-Family Residential (RMN) zone provides for row houses, multi-family dwellings and care facilities at higher densities than non-nodal zones.

B. Approval Types (Table 2.02A)

1. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
2. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
3. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
4. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.
5. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.

Uses Allowed in Residential Zones
Table 2.02A

Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		*RS*	RSN	R1S	RM	RMN
A	Dwellings					
1	Duplex dwelling	S	S		P	P
2	Manufactured dwelling	S [1]	S [1]	S	S	S
3	Multiple-family dwelling				P	P

Uses Allowed in Residential Zones Table 2.02A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		*RS*	RSN	R1S	RM	RMN
4	Row houses				P	P
5	Single-family detached dwellings	P	P	P	P	P
B	Nonresidential, Care and Public Uses					
1	Child care facility for 12 or fewer children	P	P	P	P	P
2	Child care facility for 13 or more children, within a non-residential building.				CU	P
3	Elementary, middle and high schools	CU	CU	CU	CU	CU
4	Government and public utility buildings and structures	CU	CU	CU	CU	CU
5	Group care facility for six or more persons				P	P
6	Group home for five or fewer persons	P	P	P	P	P
7	Historically or architecturally significant site	SCU	SCU	SCU	SCU	SCU
8	House of worship	S	S	S	S	S
9	Manufactured dwelling park				S	S
10	Nursing home				P	P
11	Off-street parking to serve a non-residential use allowed in zone	CU	CU	CU	CU	CU
12	Parks, play grounds and associated activities	P	P	P	P	P
13	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P	P
C	Other Uses					
1	Boat, recreational and vehicle storage pad	S	S	S	S	S
2	Common boat, recreational and vehicle storage area	S	S	S	S	S
3	Community club buildings and facilities	S	S	S	S	S
4	Deck or patio	A	A	A	A	A
5	Delivery services	S	S	S	S	S
6	Facilities during construction	S	S	S	S	S
7	Fence or freestanding wall	A	A	A	A	A
8	Garage (or carport in the case of a manufactured home)	A	A	A	A	A
9	Golf courses without a driving range	S	S	S	S	S
10	Golf driving range in conjunction with a golf course	CU	CU	CU	CU	CU
11	Greenhouse, storage building, hobby shop	A	A	A	A	A

Uses Allowed in Residential Zones Table 2.02A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		*RS*	RSN	R1S	RM	RMN
12	Home occupation	S	S	S	S	S
13	Private recreational facilities, including swimming pool, hot tub, sauna, and game courts	A	A	A	A	A
14	Residential sales office	S	S	S	S	S
15	Temporary residential sales: a. Produce and plant materials grown on the property b. Estate, garage and yard sales c. Crafts and other hobby items	S	S	S	S	S
1. Manufactured dwellings are not allowed in the Neighborhood Conservation Overlay District (NCOD).						

C. Development Standards (Tables 2.02B-F)

Residential Single-Family (RS) - Site Development Standards Table 2.02B			
Lot Area, Minimum (square feet)	Interior, flag or cul-de-sac lot		6,000 [1]
	Corner lot	Single-family dwelling, child care facility or group home [2]	8,000 [1]
		Any other use	10,000 [1]
Lot Width, Minimum (feet)	Interior, flag or cul-de-sac lot		50
	Corner lot		80
Lot Depth, Average (feet)	Interior, flag or cul-de-sac lot		90
	Corner lot		90
Street Frontage Minimum (feet)	Interior or cul-de-sac lot		40
	Corner lot	Single-family dwelling	40
		Any other use	50
	Flag lot		20-30 [3]
Residential Density, Minimum (units per net acre)			5.2

Residential Single-Family (RS) - Site Development Standards Table 2.02B				
Front Setback and Setback Abutting a Street, Minimum (feet)				20 [4, 5, 6]
Side Setback, Minimum (feet)	Primary structure			5 [5, 9]
	Accessory structure			Same as primary structure
Rear Setback, Average (feet)	Primary structure	Building height (feet)	16 or less	24 [7]
			more than 16 and less than 28	30 [7]
			28 or more	36 [7]
	Accessory structure			5
Setback to a Private Access Easement, Minimum (feet)				5
Lot Coverage, Maximum (percent)	Primary building height 16 feet or less			40
	Primary building height greater than 16 feet			35
	Accessory structure			25 of rear yard [8]
Building Height, Maximum (feet)	Primary structure	Outside Gateway subarea		35
		Gateway subarea		40
	Features not used for habitation			70
	Accessory structure			15

1. Excluding easements for private streets or driveways (See Section 1.02, Lot area)
2. Child care facility for 12 or fewer children, group home for five or fewer persons
3. See Table 3.04A, Flag Lot Access Width
4. Measured from the Special Setback (Section 3.03.02), if any
5. Except for flag lots under the option that all setbacks are 12 feet
6. Infill lots between developed lots: average of abutting residential buildings, plus or minus 5 feet, but not less than 10 feet
7. With a maximum deviation of five feet from the setback standard
8. Accessory structures are included in the total lot coverage. Accessory structures are also limited to 25% coverage of the rear yard.
9. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Nodal Residential Single-Family (RSN) - Site Development Standards Table 2.02C				
Lot Area, Minimum (square feet)	Standard lot	Interior or cul-de-sac lot		6,000 [1]
		Corner lot	Single-family dwelling, child care facility or group home [2]	8,000
			Any other use	10,000
	Small lot	Interior or cul-de-sac lot		4, 000 [1]
		Corner lot		5,000
Lot Width, Minimum (feet)	Standard lot	Interior or cul-de-sac lot		50
		Corner lot		80
	Small lot	Interior or cul-de-sac lot		45
		Corner lot		60
Lot Depth, Average (feet)	Standard lot			90
	Small lot			80
Residential Density, Minimum (units per net acre)				7.9
Street Frontage, Minimum (feet)	Standard lot	Interior or cul-de-sac lot		40
		Corner lot	Single-family dwelling, child care facility or group home [2]	40
			Any other use	50
	Small lot	Interior lot		40
		Corner lot		50
		Cul-de-sac lot		30
Front Setback and Setback Abutting a Street, Minimum (feet)				20 [3, 4]
Front Porch Setback, Maximum (feet)				15
Side Setback, Minimum (feet)				5 [7]
Rear Setback, Average (feet)		Primary structure		20 [5, 7]
		Accessory structure		5
Setback to a Private Access Easement, Minimum (feet)				5

Nodal Residential Single-Family (RSN) - Site Development Standards Table 2.02C		
Lot Coverage, Maximum (percent)	Primary building height 16 feet or less	40
	Primary building height more than 16 feet	35
	Accessory structure	25 of rear yard [6]
Building Height, Maximum (feet)	Primary structure	35
	Features not used for habitation	70
	Accessory structure	15

1. Flag lots are not allowed in the RSN zone.
2. Child care facility for 12 or fewer children, group home for five or fewer persons
3. Measured from the Special Setback (Section 3.03.02), if any
4. Infill lots between developed lots: average of abutting residential buildings, plus or minus 5 feet, but not less than 10 feet
5. With a maximum deviation of five feet from the setback standard
6. Accessory structures are included in the total lot coverage. Accessory structures are also limited to 25% coverage of the rear yard.
7. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Retirement Community Single-Family Residential (R1S) - Site Development Standards Table 2.02D		
Lot Area, Minimum (square feet)		3,600 [1]
Lot Width, Minimum (feet)		50
Lot Depth, Average (feet)		Not specified
Street Frontage, Minimum (feet)	Interior or corner lot	50
	Flag lot	24-30 [2]
	Cul-de-sac lot	40
Front Setback and Setback Abutting a Street, Minimum (feet)		20 [3]
Side Setback, Minimum (feet)	Primary structure	5 [6]
	Accessory structure	5 [4]
Rear Setback, Minimum (feet)	Primary structure	5 [6]
	Accessory structure	5
Setback to a Private Access Easement, Minimum (feet)		5
Lot Coverage, Maximum (percent)	Primary building height 14 feet or less	40
	Primary building height more than 14 feet	35
	Accessory structure	25 of rear yard [5]
Building Height, Maximum (feet)	Primary structure	35
	Features not used for habitation	70
	Accessory structure	15

1. Excluding easements for private streets or driveways (See Section 1.02, Lot area)
2. See Table 3.04A, Flag Lot Access Width
3. Measured from the Special Setback (Section 3.03.02), if any
4. Five feet if located in the rear yard
5. Accessory structures are included in the total lot coverage. Accessory structures are also limited to 25% coverage of the rear yard.
6. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Medium Density Residential (RM) - Site Development Standards Table 2.02E					
Lot Area, Minimum (square feet)	Single-family dwelling, child care facility or group home		Interior, flag or cul-de-sac lot		6,000 [1]
			Corner lot		8,000 [2]
	Duplex				8,000
	Any other use				Not specified [8]
Lot Width, Minimum (feet)	Interior, flag or cul-de-sac lot				50
	Corner lot				80
Lot Depth, Average (feet)	All lots				90
Street Frontage, Minimum (feet)	Interior, corner or cul-de-sac lot				40
	Flag lot				24-30 [4]
Residential Density (units per net acre)	Minimum		Single-family dwelling		5.2
			Any other use		12.8
	Maximum		Multiple-family dwelling		16
			Child care facility, group care facility or nursing home		32 [3]
			Manufactured dwelling park		12
			Any other use		Not specified [8]
Front Setback and Setback Abutting a Street, Minimum (feet)					20 [5]
Side Setback, Minimum (feet)	Primary structure		Single-family dwelling, duplex, child care facility or group home		5 [2, 6, 7]
			Any other use		Same as rear
	Accessory structure				Same as primary
Rear Setback, Minimum (feet)	Primary structure	Single-family dwelling, duplex, child care facility or group home	Building height (feet)	16 or less	24 [2, 6]
				more than 16 and less than 28	30 [2, 6]
				28 or more	36 [2, 6]
		Any other use except nonresidential use abutting DDC, NNC, CG, IP, SWIR, or IL zone	Building height (feet)	16 or less	24
				more than 16 and less than 28	30
				28 or more	36
		Nonresidential use abutting DDC, NNC, or CG zone			10 [9]
		Nonresidential use abutting IP, SWIR, or IL zone			15 [9]
	Accessory structure				5
Setback to a Private Access Easement, Minimum (feet)					5

Medium Density Residential (RM) - Site Development Standards Table 2.02E			
Lot Coverage, Maximum (percent)	Single-family dwelling, duplex, child care facility or group home [2]	Primary building height 16 feet or less	40
		Primary building height more than 16 feet or less	35
	Any other use		Not specified [8]
Building Height, Maximum (feet)	Primary structure		35
	Features not used for habitation		70
	Accessory structure		15

1. Excluding easements for private streets or driveways (See Section 1.02, Lot area)
2. Child care facility for 12 or fewer children, group home for five or fewer persons
3. Child care facility for 13 or more children, group home for six or more persons
4. See Table 3.04A, Flag Lot Access Width
5. Measured from the Special Setback (Section 3.03.02), if any
6. Except for flag lots under the option that all setbacks are 12 feet
7. For row houses, there is no side setback along common lot lines.
8. The minimum lot dimensions, maximum density, and maximum lot coverage are determined by setbacks, off-street parking, and landscaping requirements.
9. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Nodal Medium Density Residential (RMN) - Site Development Standards Table 2.02F			
Lot Area, Minimum (square feet)	Single-family dwelling, child care facility or group home	Interior or cul-de-sac lot	4, 000 [1, 2]
		Corner lot	5, 000 [2]
	Row house	Interior lot	3, 000 [1]
		Corner or cul-de-sac lot	3,600
	Duplex		8, 000 [1]
	Multiple-family dwelling, child care facility, group home or nursing home		87,120 [1, 3]
	Any other use		Not specified [7]
Lot Width, Minimum (feet)	Single-family dwelling, child care facility or group home	Interior or cul-de-sac Lot	45 [2]
		Corner lot	60 [2]
	Row house	Interior lot	28
		Corner or cul-de-sac lot	40
	Duplex		80
	Multiple-family dwelling, child care facility, group home or nursing home		200 [3]
	Any other use		Not specified [7]
Lot Depth, Average (feet)	Single-family dwelling, child care facility or group home or row house		80 [2]
	Duplex		90
	Multiple-family dwelling, child care facility, group home or nursing home		200 [3]
	Any other use		Not specified [7]
Street Frontage, Minimum (feet)	Single-family dwelling, child care facility, group home, or multiple-family dwelling [2]	Interior lot	40
		Corner lot	50
		Cul-de-sac lot	30
	Row house	Interior lot	28
		Corner or cul-de-sac lot	40
	Duplex		80
	Any other use		200

Nodal Medium Density Residential (RMN) - Site Development Standards Table 2.02F				
Residential Density (units per net acre)	Minimum	Single-family dwelling		7.9
		Duplex or row houses		10
		Multiple-family dwelling		19
		Any other use		Not specified [7]
	Maximum	Multiple-family dwelling		24 [7]
		Child care facility, group care facility or nursing home		32 [3, 7]
		Manufactured dwelling park		12 [7]
		Any other use		Not specified [7]
Front Setback and Setback Abutting a Street, Minimum (feet)	Single-family dwelling, child care facility or group home			20 [2, 4]
	Row house	Abutting an arterial street		20 [4]
		Not abutting an arterial street		10 [4]
	Any other use	Abutting commercial or industrial zone, or collector or arterial street		20 [4]
		Not abutting commercial or industrial zone, or collector or arterial street		10 [4]
		Abutting an RS zone		10 plus 5 for each story over 1 [4]
Front Setback and Setback Abutting a Street, Maximum (feet)	Row houses	To front porch		15
	Duplex, multiple-family dwelling, group home or nursing home	Abutting commercial or industrial zone, or collector or arterial street		Not specified [3]
		Not abutting commercial or industrial zone, or collector or arterial street		15 [3]
	Any other use			Not specified
Side Setback, Minimum (feet)	Single-family dwelling, child care facility or group home			5 [2]
	Row house			15 [5]
	All other uses	Abutting RS, RM, or P/SP zone, or an existing single-family, duplex, or multiple-family dwelling	Building height (feet)	16 or less: 24
				more than 16 and less than 28: 30
				28 or more: 36
		Abutting NNC, or CG zone		10 [8]
		Abutting SWIR zone		15
	Accessory structure			Same as primary

Nodal Medium Density Residential (RMN) - Site Development Standards Table 2.02F				
Rear Setback, Minimum (feet)	Single-family dwelling, child care facility or group home	Building height (feet)	16 or less	24 [2, 6]
			more than 16 and less than 28	30 [2, 6]
			28 or more	36 [2, 6]
	Row houses			20
	Any other use			Same as side
	Accessory structure			5
Setback to a Private Access Easement, Minimum (feet)				5
Lot Coverage, Maximum (percent)	Single-family dwelling, child care facility or group home	Primary building height 16 feet or less		40 [2]
		Primary building height more than 16 feet or less		35 [2]
	Any other use			Not specified [7]
Building Height, Maximum (feet)	Primary structure			45
	Features not used for habitation			70
	Accessory structure			15

1. Flag lots are not allowed in the RMN zone.
2. Child care facility for 12 or fewer children, group home for five or fewer persons
3. Child care facility for 13 or more children, group home for six or more persons
4. Measured from the Special Setback (Section 3.03.02), if any
5. For row houses, there is no side setback along common lot lines.
6. With a maximum deviation of five feet from the setback standard
7. The minimum lot dimensions, maximum density, and maximum lot coverage are determined by setbacks, off-street parking, and landscaping requirements.
8. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

2.03 Commercial Zones

A. The City of Woodburn is divided into the following commercial zones:

1. The Downtown Development and Conservation (DDC) zone is the community's retail core, providing for unique retail and convenient shopping
2. The Commercial General (CG) zone is the community's primary commercial area, providing for businesses requiring extensive land intensive outdoor storage and display of merchandise, equipment, or inventory.
3. The Commercial Office (CO) zone is intended primarily for office type development, with limited retail activity.
4. The Mixed Use Village (MUV) is intended to promote efficient use of land that promotes employment and housing through pedestrian-oriented development.
5. The Neighborhood Nodal Commercial (NNC) zone is intended to meet the shopping needs of nearby residents in a compact commercial setting

B. Approval Types (Table 2.03A)

1. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.
2. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
3. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
4. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
5. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.

Uses Allowed in Commercial Zones
Table 2.03A

Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
A	Civic Uses					
1	Public administration, aquatic facilities, fire protection, government and public utility buildings and storage yards	P	P	P	P	P

Uses Allowed in Commercial Zones Table 2.03A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
2	Public and private schools, house of worship, civic and social organizations	P	P	P	P	P
3	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P	P
B	Commercial Retail and Services					
1	Ambulance service	CU [3]	CU [3]	CU	CU [3]	
2	Automotive maintenance and gasoline stations, including repair services	CU	CU [3]		P [6]	
3	Bakeries, delicatessens, grocery and convenience stores	P [7]	P		P	P
4	Bowling, skating, movie and performing arts theaters	P	P		P	
5	Building material and garden equipment	P [5]	P [5]		P [5]	P [5]
6	Business services	P	P	P	P	
7	Computer, commercial, electric motor, precision equipment, industrial and home goods repair.	P [4]	P [1]	P [4]	P [4]	
8	Contractors: a. Flooring and roofing b. Equipment and machinery c. Glass and glazing d. Masonry, drywall, insulation and tile contractors e. Other types of contractors		P [4]	P [4]	P [6]	
9	Craft industries: a. Apparel manufacturing b. Leather manufacturing, furniture and related product manufacturing, including cabinets c. Sporting goods manufacturing d. Doll, toy and game manufacturing	S	S	S	S	S
10	Delivery services	S	S	S	S	S
11	Dry cleaning, laundry and self-service laundry service	P [7]	P		S	P
12	Fitness and recreational sports	P	P	P	P	P
13	Funeral home	P	P	P	P	P
14	Hospitals and ancillary uses		CU [3]			
15	Hotels, motels and bed and breakfast inns	P	P	P	P	P
16	Office and office services and supplies	P	P	P	P	P

Uses Allowed in Commercial Zones Table 2.03A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
17	Other amusements, including ballrooms		P [1]			
18	Pawn, check cashing, payday loan and cash transfer	CU [7]	P		P	
19	Printing, publishing, copying, bonding, finance, insurance, medical, data processing, social assistance, legal services, management, and corporate offices	P [7]	P	P	P	P
20	Professional services	P	P		P	
21	Restaurants and drinking places	P [7]	P	P	P	P
22	Retail trade offering goods and services directly to customers	P [7]	P		P	P
23	Spectator sports		P [1]			
24	Taxidermist		CU [3]			
25	Veterinary service		CU [3]			
26	Wine and liquor	CU [7]	P		P	
C	Industrial					
1	Charter bus, special needs transportation, transit system, school transportation, limousine service and taxi service		CU [3]			
2	Heavy equipment and motor vehicle sales: a. Manufactured (mobile) home dealers b. Motor vehicle and parts dealers, including new car, used car, recreational vehicle, motorcycle, boat, parts and tire dealers c. Truck dealers, including new truck, used truck, parts and tire dealers d. Tractor, farm machinery and equipment dealers e. Farm, garden and landscaping supplies		CU [3]			
3	Manufacturing of metal products, furniture and cabinets		P [4]	P [6]		
4	Motor freight transportation and warehousing, including local or long-distance trucking or transfer services, storage of farm products, furniture, other household goods, or commercial goods		CU [1]			
5	Motor vehicle towing		CU [3]			
6	Parking lots and garages	P	P	P		P
7	Recreational vehicle park		CU [1]			
D	Miscellaneous					
1	Facilities during construction	S	S	S	S	S

Uses Allowed in Commercial Zones Table 2.03A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
2	Fence or free-standing wall	A	A	A	A	A
3	Temporary outdoor marketing and special event: a. Arts and crafts b. Food and beverages, including mobile food services c. Seasonal sales of fireworks, Christmas trees, produce or plant materials d. Amusement rides and games e. Entertainment f. Any other merchandise or service which is neither accessory to a primary, permanent use of the property nor marketed by employees of that permanent use	S	S	S	S	S
E	Residential					
1	Attached single-family (row houses) dwellings	P	P [2]		P	P
2	Child care facility, group home, and nursing home	P [8]	P [8]	P [8]	P [8]	P [8]
3	One dwelling unit, in conjunction with a commercial use	P	P	P	P	P
4	Multiple-family dwellings	P	P	CU	P	P

1. Not allowed in the Gateway Overlay District
2. Only allowed in the Gateway Overlay District
3. Allowed outright if not within 200 feet of residentially zoned properties
4. Within a building, no outdoor storage or repair
5. All outdoor storage and display shall be enclosed by a seven foot masonry wall.
6. Existing uses are allowed as a permitted use, new uses are not allowed in the MUV
7. Drive-throughs are not allowed
8. Child care facility for 13 or more children, group home for six or more persons

C. Development Standards (Tables 2.03B-F)

Downtown Development and Conservation (DDC) - Site Development Standards Table 2.03B			
Lot Area, Minimum (square feet)			No minimum
Lot Width, Minimum (feet)			No minimum
Lot Depth, Minimum (feet)			No minimum
Street Frontage, Minimum (feet)			No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)			Zero [1]
Front Setback and Setback Abutting a Street, Maximum (feet)			10 [1]
Side or Rear Setback, Minimum (feet)			No minimum [4]
Setback to a Private Access Easement, Minimum (feet)			No minimum
Lot Coverage, Maximum			Not specified [2]
Residential Density (units per net acre)	Minimum	Row house	12
		Child care facility, group home, or nursing home [3]	12
		Multi-family dwelling	No minimum
	Maximum	Row house	16
		Child care facility, group home, or nursing home [3]	32
		Multi-family dwelling	No maximum
Building Height, Maximum (feet)	Primary or accessory structure	Outside Gateway subarea	35
		Gateway subarea	40

1. This is a guideline, not a standard. A setback of up to 10 feet is permitted when occupied by pedestrian amenities (e.g., plaza, outdoor seating).
2. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.
3. Child care facility for 13 or more children, group home for six or more persons
4. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Commercial General (CG) - Site Development Standards Table 2.03C				
Lot Area, Minimum (square feet)				No minimum
Lot Width, Minimum (feet)				No minimum
Lot Depth, Minimum (feet)				No minimum
Street Frontage, Minimum (feet)				No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)				5 [1]
Side or Rear Setback, Minimum (feet)	Abutting RS, R1S, or RM zone			10 [4]
	Abutting CO, CG, DDC, NNC, P/SP, IP, SWIR, or IL zone			0 or 5 [4, 5]
Setback to a Private Access Easement, Minimum (feet)				5
Lot Coverage, Maximum				Not specified [2]
Residential Density (units per net acre)	Minimum	Row house		12
		Child care facility, group home, or nursing home		12
		Multi-family dwelling	Stand-alone	12
			In mixed use development	No minimum
	Maximum	Row house		24
		Child care facility, group home, or nursing home		32
		Multi-family dwelling	Stand-alone	32
			In mixed use development	32
Building Height, Maximum (feet)	Primary or accessory structure	Outside Gateway subarea		70
		Western Gateway subarea		50
		Eastern Gateway subarea		40
	Features not used for habitation			100

1. Measured from the Special Setback (Section 3.03.02), if any
2. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.
3. Only allowed in the Gateway Overlay District
4. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.
5. A building may be constructed at the property line, or shall be set back at least five feet.

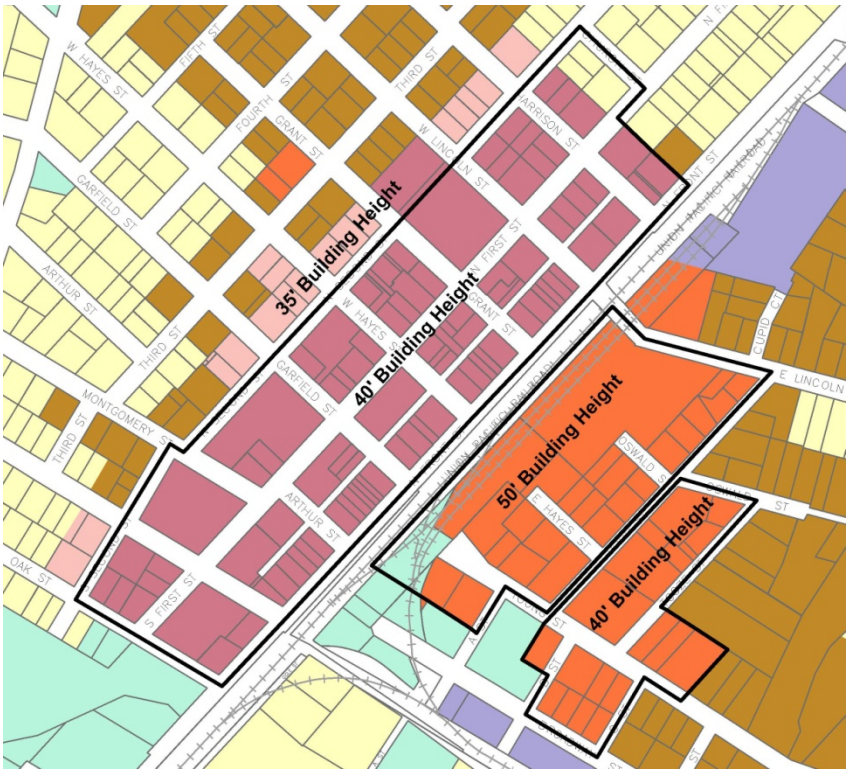


Figure 2.03A - Building Height Limits in the Gateway Subarea

Commercial Office (CO) - Site Development Standards Table 2.03D				
Lot Area, Minimum (square feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Lot Width, Minimum (feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Lot Depth, Average (feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Street Frontage, Minimum (feet)	Any use			No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)				15 [2]
Side or Rear Setback, Minimum (feet)	By-right use, group home, or government building		Abutting RS, R1S, RM, P/SP, or CO zone	10 [4, 5]
			Abutting DDC, NNC, CG, IP, SWIR, or IL zone	15 [4, 5]
	Conditional use except group home or government building			Per Table 2.02E [1]
Setback to a Private Access Easement, Minimum (feet)				5
Lot Coverage, Maximum				Not specified [3]
Residential Density (units per net acre)	Minimum	Child care facility, group home, or nursing home		12 [4]
		Multi-family dwelling	Stand-alone	12
			In mixed use development	No minimum
	Maximum	Child care facility, group home, or nursing home		32 [4]
		Multi-family dwelling	Stand-alone	No maximum
			In mixed use development	32
Building Height, Maximum (feet)	Primary or accessory structure			35
	Features not used for habitation			70

1. Site development standards for the RM zone
2. Measured from the Special Setback (Section 3.03.02), if any
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.
4. Child care facility for 13 or more children, group home for six or more persons
5. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Mixed Use Village (MUV) - Site Development Standards Table 2.03E				
Lot Area, Minimum (square feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Lot Width, Minimum (feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Lot Depth, Average (feet)	Nonresidential use			No minimum
	Residential use			Per Table 2.02E [1]
Street Frontage, Minimum (feet)	Any use			No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)				0 – 15 recommended [2]
Side or Rear Setback, Minimum (feet)	By-right use, group home, or government building	Abutting RS, R1S, RM, P/SP, or CO zone		10 [4]
		Abutting DDC, NNC, CG, IP, SWIR, or IL zone		15 [4]
	Conditional use except group home or government building			Per Table 2.02E [1]
Setback to a Private Access Easement, Minimum (feet)				5
Lot Coverage, Maximum				Not specified [3]
Residential Density (units per net acre)	Minimum	Row house		12
		Child care facility, group home, or nursing home		12
		Multi-family dwelling	Stand-alone	12
			In mixed use development	No minimum
	Maximum	Row house		32
		Child care facility, group home, or nursing home		32
		Multi-family dwelling	Stand-alone	32
			In mixed use development	32
Building Height, Maximum (feet)	Primary or accessory structure			35
	Features not used for habitation			70

1. Site development standards for the RM zone
2. Measured from the Special Setback (Section 3.03.02), if any
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.
4. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

Nodal Neighborhood Commercial (NNC) - Site Development Standards Table 2.03F			
Lot Area, Minimum (square feet)			No minimum
Lot Width, Minimum (feet)			No minimum
Lot Depth, Minimum (feet)			No minimum
Street Frontage, Minimum (feet)			No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)			Zero
Front Setback and Setback Abutting a Street, Maximum (feet)			10 [1]
Side or Rear Setback, Minimum (feet)			No minimum [3]
Setback to a Private Access Easement, Minimum (feet)			No minimum
Lot Coverage, Maximum			Not specified [2]
Residential Density (units per net acre)	Minimum	Row house	20
		Child care facility, group home, or nursing home	12
		Multi-family dwelling	19
	Maximum	Row house	No maximum
		Child care facility, group home, or nursing home	32
		Multi-family dwelling	No maximum
Building Height, Maximum (feet)		Primary or accessory structure	45

1. This is a guideline, not a standard.
2. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.
3. A house of worship shall be set back at least 20 feet from a property line abutting a residential zone or use.

2.04 Industrial and Public Zones

A. The City of Woodburn is divided into the following industrial and public zones:

1. The Light Industrial (IL) zone, which is intended for industrial activities that include land-intensive activities;
2. The Industrial Park (IP) zone, which is intended for light industrial activities in a park-like setting;
3. The Public and Semi-Public (P/SP) zone, which is intended for public uses, parks, schools and cemeteries.
4. The Southwest Industrial Reserve (SWIR), which is intended for high technology and research development activities;

B. Approval Types (Table 2.04A)

1. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.
2. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
3. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
4. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
5. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.

Uses Allowed in Industrial Zones
Table 2.04A

Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
A	Civic Uses				
1	Golf driving range	P	P	CU	
2	Parks, play grounds and associated activities, golf courses without a driving range			P	
3	Public administration, aquatic facilities, fire protection, government and public utility buildings and storage yards	P	P	CU	P

Uses Allowed in Industrial Zones Table 2.04A					
Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
4	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P
5	Trade schools	P	P	CU	P
B	Commercial Retail and Services				
1	Ambulance service	P	P		
2	Automotive maintenance and gasoline stations, including repair services	P	P		
3	Business services		P		P
4	Contractors: f. Flooring and roofing g. Equipment and machinery h. Glass and glazing i. Masonry, drywall, insulation and tile contractors j. Other types of contractors	P	P		
5	Delivery services	S	S	S	S
6	Fitness and recreational sports	P	P		P
7	Hospitals and ancillary uses		P	CU	P
8	Restaurants and drinking places	P	P		P
9	Marijuana dispensaries	S	S		
C	Industrial				
1	Auction houses, except livestock and poultry sales	CU			
2	Automotive wrecking yards	CU			
3	Charter buses, special needs transportation, transit system, school transportation, limousine service and taxi service	P	P		
4	Chemical manufacturing	CU	CU		
5	Recycling center	CU	CU		
6	Asphalt or Portland cement concrete batch plant	CU	CU		
7	Commercial and industrial equipment repair, transit and ground transportation	P	CU		

Uses Allowed in Industrial Zones Table 2.04A					
Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
8	Electronic and other electrical equipment and components, including manufacturing machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy; electricity distribution equipment; electrical industrial apparatus; household appliances; electrical lighting and wiring equipment; radio and television receiving equipment; communications equipment; electronic components and accessories; and other electrical equipment and supplies	P	P		P
9	Fabricated metal products, including fabricating ferrous and non-ferrous metal products such as metal cans, tin ware, hand tools, cutlery, general hardware, non-electric heating apparatus, fabricated structural metal products, metal forgings, metal stampings, and metal and wire products	CU			P
10	Industrial and commercial machinery and computer equipment, including engines and turbines; farm and garden machinery; construction, mining, and oil field machinery; elevators and conveying equipment; hoists, cranes, monorails, trucks and tractors; metalworking machinery; special industry machinery; general industrial machinery; computer and peripheral equipment and office machinery; and refrigeration and service industry machinery	P	P		P
11	Heavy equipment and motor vehicle sales: e. Manufactured home dealers f. Motor vehicle and parts dealers, including new cars, used cars, recreational vehicles, motorcycles, boats, parts and tire dealers g. Truck dealers, including new trucks, used trucks, parts and tire dealers h. Tractor and farm machinery and equipment dealers i. Farm, garden and landscaping supplies	S	S		
12	Manufacturing: a. Beverage, food and tobacco b. Furniture and related products c. Leather and allied products d. Paper, limited to assembly e. Miscellaneous manufacturing f. Plastics and rubber g. Textile products	P	P		

Uses Allowed in Industrial Zones Table 2.04A					
Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
13	Motor freight transportation and warehousing, including local or long-distance trucking or transfer services, storage of farm products, furniture and other household goods, and commercial goods	P	CU		P
14	Non-depository credit institutions engaged in extending credit in the form of loans, but not engaged in deposit banking		P		P
15	Paper manufacturing	CU			
16	Parking lots and garages	P	P		
17	Petroleum and coal products manufacturing with all storage underground	CU			
18	Printing, publishing, and allied industries	P	P		P
19	Professional services		P		P
20	Stone, clay, glass, and concrete products including manufacturing flat glass, other glass products, cement, structural clay products, pottery, concrete and gypsum products, cut stone, abrasive and asbestos products, and other products from materials taken principally from the earth in the form of stone, clay, and sand	P			P
21	Telecommunication facilities subject to Section 2.08.03	SCU	SCU		SCU
22	Wholesale trade in durable and non-durable goods	P	P		P
23	Wood product manufacturing	P	CU		
D	Miscellaneous				
1	Facilities during construction	S	S	S	S
2	Fence or free-standing wall	A	A	A	A

Uses Allowed in Industrial Zones Table 2.04A					
Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
3	Temporary outdoor marketing and special event: a. Arts and crafts b. Food and beverages, including mobile food services c. Seasonal sales of fireworks, Christmas trees, produce or plant materials d. Amusement rides and games e. Entertainment f. Any other merchandise or service which is neither accessory to a primary, permanent use of the property, nor marketed by employees of that permanent use	S	S	S	S
E	Residential				
1	One dwelling unit in conjunction with an industrial use	P	P	P	P

C. Development Standards (Tables 2.04B-E)

Light Industrial (IL) - Site Development Standards Table 2.04B		
Lot Area, Minimum (square feet)		No minimum
Lot Width, Minimum (feet)		No minimum
Lot Depth, Minimum (feet)		No minimum
Street Frontage, Minimum (feet)		No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)		10 [1]
Side or Rear Setback, Minimum (feet)	Abutting P/SP zone or a residential zone or use	30
	Abutting a commercial or industrial zone	0 or 5 [2]
Setback to a private access easement, Minimum (feet)		5
Lot Coverage, Maximum		Not specified [3]
Building Height, Maximum (feet)	Primary or accessory structure	70
	Features not used for habitation	100

1. Measured from the Special Setback (Section 3.03.02), if any.
2. A building may be constructed at the property line, or shall be set back at least five feet.
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.

Industrial Park (IP) - Site Development Standards Table 2.04C		
Lot Area, Minimum (square feet)		No minimum
Lot Width, Minimum (feet)		No minimum
Lot Depth, Minimum (feet)		No minimum
Street Frontage, Minimum (feet)		No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)		10 [1]
Side or Rear Setback, Minimum (feet)	Abutting P/SP zone or a residential zone or use	30
	Abutting a commercial or industrial zone	0 or 5 [2]
Setback to a Private Access Easement, Minimum (feet)		5
Lot Coverage, Maximum		Not specified [3]
Building Height, Maximum (feet)	Primary or accessory structure	45
	Features not used for habitation	70

1. Measured from the Special Setback (Section 3.03.02), if any.
2. A building may be constructed at the property line, or shall be set back at least five feet.
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.

Public/Semi-Public (P/SP) - Site Development Standards Table 2.04D			
Lot Area, Minimum			No minimum
Lot Width, Minimum			No minimum
Lot Depth, Minimum			No minimum
Street Frontage, Minimum			No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)			20 [1]
Side or Rear Setback, Minimum (feet)	Abutting P/SP zone or a residential zone or use		20
	Abutting a commercial or industrial zone		0 or 5 [2]
Setback to a Private Access Easement, Minimum (feet)			5
Lot Coverage, Maximum			Not specified [3]
Building Height, Maximum (feet)	Primary or accessory structure	Outside Gateway subarea	35
		Gateway subarea	50
	Features not used for habitation		No minimum

1. Measured from the Special Setback (Section 3.03.02), if any.
2. A building may be constructed at the property line, or shall be set back at least five feet.
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.

Southwest Industrial Reserve (SWIR) - Site Development Standards Table 2.04E		
Lot Area, Minimum (square feet)		See Table 2.04F
Lot Width, Minimum (feet)		No minimum
Lot Depth, Minimum (feet)		No minimum
Street Frontage, Minimum (feet)		No minimum
Front Setback and Setback Abutting a Street, Minimum (feet)		10 [1]
Side or Rear Setback, Minimum (feet)	Abutting P/SP zone or a residential zone or use	30
	Abutting a commercial or industrial zone	0 or 5 [2]
Setback to a Private Access Easement, Minimum (feet)		5
Lot Coverage, Maximum		Not specified [3]
Building Height, Maximum (feet)	Primary or accessory structure	45
	Features not used for habitation	70

1. Measured from the Special Setback (Section 3.03.02), if any.
2. A building may be constructed at the property line, or shall be set back at least five feet.
3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.

Southwest Industrial Reserve (SWIR) - Lot Standards Table 2.04F					
Development Subarea	Assessor's Tax Lot Number	Gross Acres	Buildable Acres	Required Lot Sizes (Acres)	Conceptual Lot Sizes (Acres)
A [1]	052W1100300	108	88	25-50 10-25 10-25 5-10 5-10 2-5 2-5	35 15 15 8 8 4 3
B [2]	052W1400200	9	22	10-25 5-10	15 7
	052W1400600	13			
C	052W1400700	8		No standard	
D [1, 4]	052W1400800	51	106	50-100 25-50 2-5	65 33 4
	052W1400900	43			
	052W1401000	10			
	052W1401100	22			
E [2]	052W1401200	4	4	2-5	4

Southwest Industrial Reserve (SWIR) - Lot Standards Table 2.04F					
Development Subarea	Assessor's Tax Lot Number	Gross Acres	Buildable Acres	Required Lot Sizes (Acres)	Conceptual Lot Sizes (Acres)
F [2, 3]	052W1301100	24	96	96	96
	052W1401500	59			
	052W1401600	25			
G [1]	052W2300100	50	46	25-50 5-10 2-5	35 8 3

1. Land division is permitted with master plan approval.
2. Land division is not permitted.
3. Shall be developed with a use with at least 300 employees.
4. 50-100 acre lot shall be developed with a use with at least 200 employees.

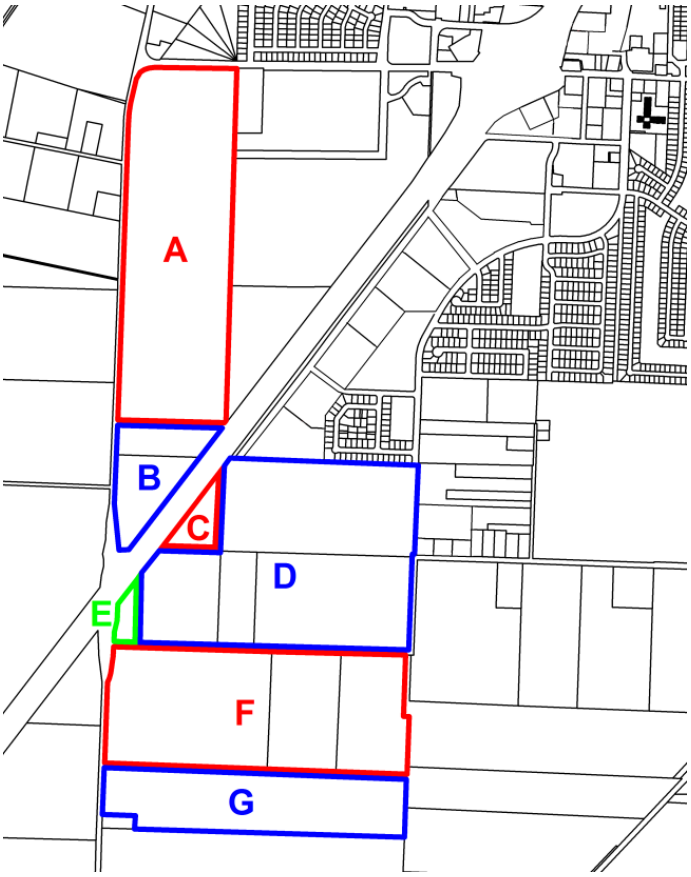


Figure 2.04A – SWIR Development Subareas

2.05 Overlay Districts

There are six land use Overlay Districts within the City. Overlay districts include development standards for historic preservation, natural resource conservation, traffic generation, etc, which are in addition to the land use regulations of the underlying zones.

2.05.01	Gateway Commercial General Overlay District
2.05.02	Interchange Management Area Overlay District
2.05.03	Neighborhood Conservation Overlay District
2.05.04	Nodal Overlay Districts
2.05.05	Riparian Corridor and Wetlands Overlay District
2.05.06	Southwest Industrial Reserve

2.05.01 Gateway Commercial General Overlay District

A. Purpose

The Gateway Commercial General Overlay District is the Commercial General (CG) area immediately adjacent to the downtown. Special use provisions within the Gateway Overlay District allow multi-family residential development, either as a stand-alone use, or as part of a vertical mixed-use project. Specific uses are prohibited, while other uses are limited, allowed only within enclosed buildings or behind masonry walls. Additionally, specific height limitations apply within this Overlay District. The district allows multi-family residential to provide more consumers living within an area of commercial development and to provide 24-hour a day life in the eastern entrance to the downtown.

B. Applicable Provisions

The Gateway Commercial General Overlay District includes special-use provisions limiting outside storage and land-intensive uses, while allowing multi-family residential development, either as a stand-alone use or as part of a vertical mixed use project. The land use and development standards are contained in this ordinance. The Overlay District is noted on the Official Zoning Map.

Figure 2.05A – Gateway Commercial General Overlay District

2.05.02 Interchange Management Area Overlay District

A. Purpose

The purpose of the Interchange Management Area Overlay District (IMA) is to preserve the long-term capacity of the I-5/Highway 214 Interchange. Preserving the capacity of the interchange is essential for the City's future. Continued access to I-5 is critical for existing businesses and for attracting new businesses and development to the community.

The IMA complements the provisions of the Southwest Industrial Reserve (SWIR) Zoning District by ensuring that industrial land is retained for the development envisioned in the Woodburn Comprehensive Plan. The IMA also ensures that needed industrial, commercial and residential lands within the IMA are protected from incompatible development generating excessive vehicle trips.

The vehicle trip budget (Table 2.05A) identifies by parcel the maximum amount of peak hour trips for each parcel within the IMA and is intended to be high enough to accommodate peak hour trips anticipated by the Woodburn Comprehensive Plan and the Transportation Systems Plan (TSP), but low enough to restrict unplanned vehicle trips that could adversely affect the I-5/Hwy 214 Interchange.

B. Applicability

The provisions of this Section apply to all Type II – V land use applications that propose to allow development that will generate more than 20 peak hour vehicle trips (based on the latest Institute of Transportation Engineers Trip Generation Manual) on parcels identified in

Table 2.05A. The provisions of this Section apply to all properties within the boundary of the IMA.

C. Vehicle Trip Budgets

This Section establishes a total peak hour trip generation budget for planned employment (commercial and industrial) land uses within the IMA.

1. The IMA trip budget for vacant commercial and industrial parcels identified in Table 2.05A is 2,500 peak hour vehicle trips. An estimated 1,500 additional peak hour residential trips are planned within the IMA. The IMA vehicle trip budget is allocated to parcels identified in Table 2.05A on a first-developed, first-served basis.

2. Parcel budgets are based on 11 peak hour trips per developed industrial acre, and 33 peak hour trips per developed commercial acre.

3. The parcel budget for each parcel will be reduced in proportion to actual peak hour vehicle trips generated by new development on any portion of the parcel.

4. The City may allow development that exceeds the parcel budget for any parcel in accordance with this Section.

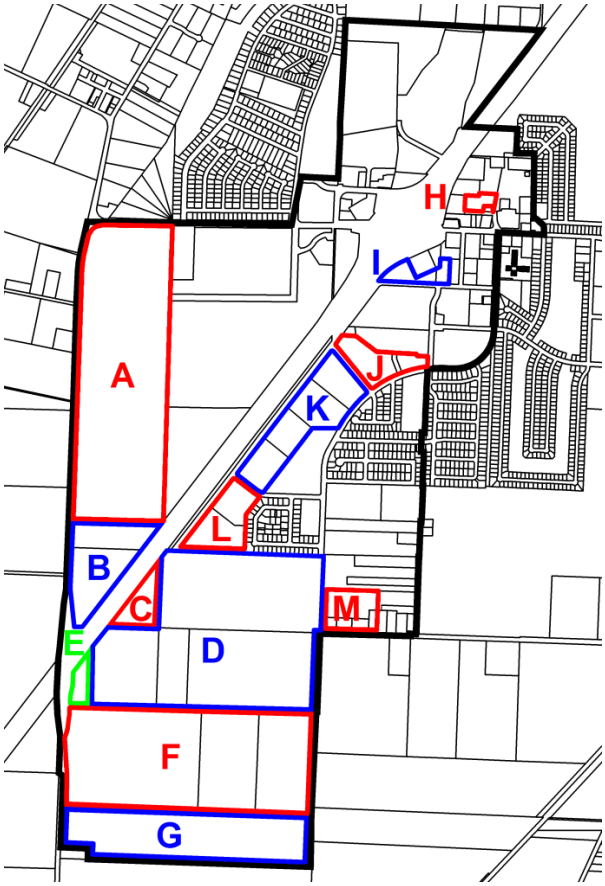


Figure 2.05B – Interchange Management Area Boundary and Subareas

Vehicle Trip Budget by Parcel (Parcel Budget) Table 2.05A				
Subarea	Assessor's Tax Lot Number	Comprehensive Plan Designation	Buildable Acres	Maximum Peak Hour Vehicle Trips
A	052W11 00300	SWIR	88	968
B	052W14 00200 052W14 00600	SWIR	22	242
C	052W1400700	SWIR	Exempt	Exempt
D	052W14 00800 052W14 00900 052W14 01000 052W14 01100	SWIR	106	1,199
E	052W14 01200	SWIR	4	44
F	052W13 01100 052W14 01500 052W14 01600	SWIR	96	1,056
G	052W23 00100	SWIR	46	506
H	052W12AC 04301	Commercial	2	66
I	052W12C 00604	Commercial	1	33
	052W12C 00605		3	99
J	052W12C 02300	Commercial	7	231
	052W12C 02400		2	66
K	052W12C 02100	Commercial	7	231
	052W12C 02200		6	198
	052W13 01600		5	165
	052W14 02300		6	198
L	052W14 02000	Commercial	8	264
	052W14 02100		5	165
M	052W13BD 00900 (westerly portion) 052W13BD 01500 052W13BD 01600 052W13BD 01700 052W13BD 01800	Nodal Commercial	9	297

D. Administration

This Section delineates responsibilities of the City and ODOT to monitor and evaluate vehicle trip generation impacts on the I-5 interchange from development approved under this Section.

1. A Traffic Impact Analysis (TIA) is required for all land use applications subject to the provisions of this Section. The TIA must meet City and ODOT administrative rule (OAR Chapter 734, Division 51) requirements and shall include an evaluation and recommendation of feasible Transportation Demand Management (TDM) measures that will minimize peak hour vehicle trips generated by the proposed development.
2. For a land use application subject to the provisions of this Section:
    a. The City shall not deem the land use application complete unless it includes a TIA prepared in accordance with TIA Requirements;
    b. The City shall provide written notification to ODOT when the application is deemed complete. This notice shall include an invitation to ODOT to participate in the City's review process;
    c. ODOT shall have at least 20 days to provide written comments to the City, measured from the date the completion notice was mailed. If ODOT does not provide written comments during this 20-day period, the City's decision may be issued without consideration of ODOT comments.
3. The details of City and ODOT monitoring and coordination responsibilities are found in the Woodburn – ODOT Intergovernmental Agreement (IGA).
    a. The City shall be responsible for maintaining a current ledger documenting the cumulative peak hour trip generation impact from development approved under this Section, compared with the IMA trip budget.
    b. The City may adjust the ledger based on actual development and employment data, subject to review and concurrence by ODOT.
    c. The City will provide written notification to ODOT when land use applications approved under this Section, combined with approved building permits, result in traffic generation estimates that exceed 33% and 67% of the IMA trip budget.
4. This Section recognizes that vehicle trip allocations may become scarce towards the end of the planning period, as the I-5 Interchange nears capacity. The following rules apply to allocations of vehicle trips against the IMA trip budget:
    a. Vehicle trip allocations are vested at the time of design review approval.
    b. Vehicle trips shall not be allocated based solely on approval of a comprehensive plan amendment or zone change, unless consolidated with a subdivision or design review application.
    c. Vesting of vehicle trip allocations shall expire at the same time as the development decision expires.

E. Allowed Uses

Uses allowed in the underlying zoning district are allowed, subject to other applicable provisions of the Woodburn Development Ordinance and this Section.

F. Comprehensive Plan and Zoning Map Amendments

1. The provisions of this Section (2.05.02.F) apply to all Comprehensive Plan Map amendments within the IMA. This Section does not apply to Zoning Map amendments

that result in conformance with the applicable Comprehensive Plan Map designation, such as Zoning Map amendments that occur when land is annexed to the City.

2. Applications for Comprehensive Plan Map amendments and for Zoning Map amendments shall determine whether the proposed change will significantly affect a collector or arterial transportation facility.

3. To ensure that the remaining capacity of the I-5 Interchange is reserved for targeted employment opportunities and needed housing, this section imposes the following prohibitions on Comprehensive Plan Map amendments within the IMA:

   a. Comprehensive Plan Map amendments that will increase the net commercial land area within the IMA shall be prohibited.

   b. Comprehensive Plan Map amendments that allow land uses that will generate traffic in excess of the IMA trip budget shall be prohibited.

G. Interchange Capacity Preservation Standards

Land use applications subject to the provisions of this Section shall comply with the following:

1. Peak hour vehicle trips generated by the proposed development shall not, in combination with other approved developments subject to this Section, exceed the IMA trip budget of 2,500.

2. Peak hour vehicle trips generated by the proposed development shall not exceed the maximum peak hour vehicle trips specified in Table 2.05A for the subject parcel, except:

   a. Development may be allowed to exceed the maximum, if the development will contribute substantially to the economic objectives found in the Comprehensive Plan.

   b. Residential development on a parcel zoned Commercial shall be allowed to exceed the maximum.

3. Transportation Demand Management (TDM) measures shall be required to minimize peak hour vehicle trips and shall be subject to annual review by the City.

2.05.03 Neighborhood Conservation Overlay District

A. Purpose

The Neighborhood Conservation Overlay District (NCOD) is intended to conserve the visual character and heritage of Woodburn's oldest and most central neighborhood.

B. Applicability

The NCOD provides the basis for specific architectural design guidelines. The NCOD architectural guidelines are contained in Section 3.07.04. The guidelines are applicable to all single-family and duplex dwellings, both existing and proposed.

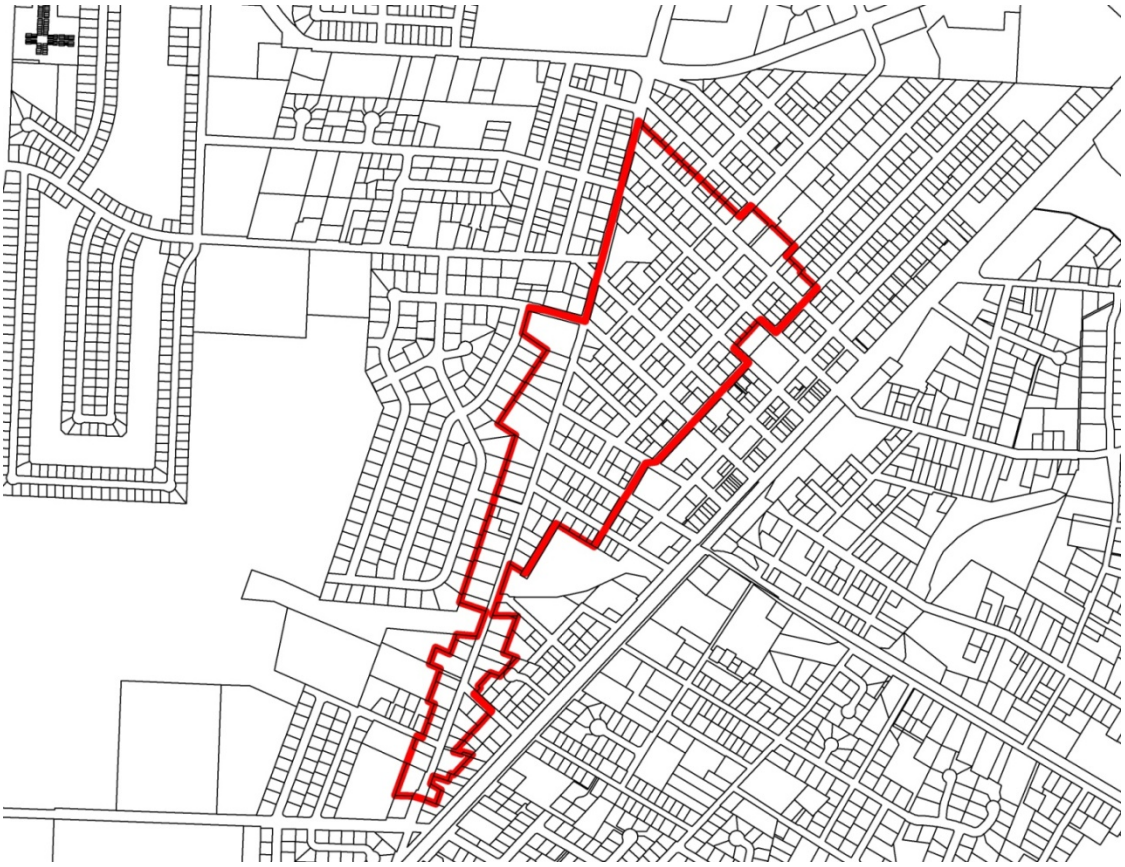


Figure 2.05C – Neighborhood Conservation Overlay District

2.05.04 Nodal Overlay Districts

A. Purpose

Development within the Nodal Overlay Districts includes multi-family, attached single family (row houses) and small-lot single family development, with limited commercial development and accessible parks. The intent of the overlay districts is to provide community identity to higher density residential developments within walking distance (generally one-half mile or less) of the neighborhood commercial center. Nodal development will be designed with a pedestrian focus, with interconnected streets and pedestrian walkways, alleys serving garages located at the rear of lots, and with limited on-street parking.

Nodal Overlay Districts are shown on the Comprehensive Plan Map with zoning applied at the time of annexation. To ensure that land is efficiently used within the Urban Growth Boundary (UGB), master plans shall be required for land within Nodal districts.

B. Nodal Single Family Residential (RSN) and Nodal Medium Density Residential (RMN) Districts

1. Vehicular access directly to a public street is prohibited and alley access to garages facing the alley is required. Off-street parking, maneuvering and storage is prohibited within a required front or side setback, or any yard abutting a street.

2. Alleys shall be required for all small lot single-family residential subdivisions. Alleys shall be dedicated and paved to a minimum width of 20 feet. No parking shall be allowed within an alley right-of-way.

C. Master Planning Requirement

1. A master development plan shall be approved by the City Council for the entire area designated as Nodal Overlay on the Comprehensive Plan Map, prior to annexation of any property within the Nodal Development Overlay Comprehensive Land Use Plan map designation. The master plan shall be conceptual and non-binding in nature, but may be used as a general guide for development within the Nodal Overlay Districts.

2. The required master plan shall show:

   a. The location and rights-of-way for existing and planned streets. These streets shall provide access to all existing and proposed parcels, consistent with the Transportation System Plan (TSP);

   b. The location and size of existing and planned sanitary sewer, storm water and water facilities, at adequate levels to serve existing and proposed development;

   c. The location and area of the Riparian Corridor and Wetlands Overlay District (RCWOD). Planned streets and public facilities that cannot reasonably avoid the RCWOD shall be indicated;

   d. A development plan for the Nodal Neighborhood Commercial center, neighboring multi-family areas, and potential parks, including planned pedestrian and bicycle connections within the Nodal Overlay District as shown on the Transportation System Plan, and pedestrian and bicycle connections to Southwest Industrial Reserve areas;

   e. A development plan for all residential areas, demonstrating consistency with applicable nodal design standards.

D. Removal of a Nodal Overlay District

1. Removal of a Nodal Overlay District from any area or parcel shall require the following:

   a. A revised transportation, housing and commercial land needs analysis, consistent with the Goal 9, 10 and 12 Rules (OAR Chapter 660, Divisions 8, 9 and 12);

   b. A Comprehensive Plan Amendment that demonstrates compliance with all applicable Statewide Planning Goals, applicable goals and policies of the Marion County Framework Plan, and applicable goals and policies of the Comprehensive Plan;

   c. A zoning map amendment that demonstrates consistency with the Comprehensive Plan.

2.05.05 Riparian Corridor and Wetlands Overlay District

A. Purpose

The Riparian Corridor and Wetlands Overlay District (RCWOD) is intended to conserve, protect and enhance significant riparian corridors, wetlands, and undeveloped floodplains in keeping with the goals and policies of the Comprehensive Plan. The RCWOD is further intended to protect and enhance water quality, prevent property damage during floods and storms, limit development activity in designated areas, protect native plant species, maintain and enhance fish and wildlife habitats, and conserve scenic and recreational values.

B. Boundaries of the RCWOD

1. The RCWOD includes:

   a. Riparian corridors extending upland 50 feet from the top of the bank of the main stem of Senecal Creek and Mill Creek and those reaches of their tributaries identified as fish-bearing perennial streams on the Woodburn Wetlands Inventory Map; and

   b. Significant wetlands identified on the Woodburn Wetlands Inventory Map. Where significant wetlands are located fully or partially within a riparian corridor, the RCWOD shall extend 50 feet from the edge of the wetland; and

   c. The 100-year floodplain on properties identified as vacant or partly vacant on the 2005 Woodburn Buildable Lands Inventory.

2. The approximate boundaries of the RCWOD are shown on the Zoning Map. The precise boundaries for any particular lot should be verified by the property owner when making a land use application. Map errors may be corrected as provided in this Ordinance (Section 1.02.04).

C. Permitted Uses and activities

The following uses and activities are allowed, provided they are designed and constructed to minimize intrusion into the RCWOD:

1. Erosion or flood control measures that have been approved by the Oregon Department of State Lands, the U.S. Army Corps of engineers, or another state or federal regulatory agency
2. Maintenance of existing structures, lawns and gardens
3. Passive recreation uses and activities
4. Removal of non-native plant species and replacement with native plant species
5. Streets, roads, and paths that are included in an element of the Comprehensive Plan
6. Utilities
7. Water-related and water-dependent uses, including drainage facilities, water and sewer facilities, flood control projects, drainage pumps, public paths, access ways, trails, picnic areas or interpretive and educational displays and overlooks, including benches and outdoor furniture

D. Prohibited Uses and Activities

1. New buildings or structures or impervious surfaces, except for replacement of existing structures within the original building footprint
2. Expansion of existing buildings or structures or impervious surfaces
3. Expansion of areas of pre-existing non-native landscaping such as lawn, gardens, etc.
4. Dumping, piling, or disposal of refuse, yard debris, or other material
5. Removal of vegetation except for:
    a. Uses permitted by this Section
    b. Perimeter mowing of a wetland for fire protection purposes;
    c. Water-related or water-dependent uses, provided they are designed and constructed to minimize impact on the existing riparian vegetation;
    d. Removal of emergent in-channel vegetation that has the potential to cause flooding;
    e. Hazardous tree removal.
6. Grading, excavation and the placement of fill except for uses permitted by this Section.

E. Variances

The restrictions of this Section may be reduced or removed if they render an existing lot or parcel unbuildable or work an excessive hardship on the property owner. The reduction or removal shall be decided through the Variance process.

F. Site Maintenance

1. Any use, sign or structure, and the maintenance thereof, lawfully existing on the date of adoption of this ordinance, is permitted within the RCWOD. Such use, sign or structure may continue at a similar level and manner as existed on the date of the adoption of this ordinance.
2. The maintenance and alteration of pre-existing ornamental landscaping is permitted as long as no native vegetation is disturbed. Maintenance of lawns, planted vegetation and landscaping shall be kept to a minimum and not include the spraying of pesticides or herbicides. Vegetation that is removed shall be replanted with native species. Maintenance trimming of existing trees shall be kept at a minimum and under no circumstances can the trimming maintenance be so severe as to compromise the tree's health, longevity, and resource functions. Vegetation within utility easements shall be kept in a natural state and replanted when necessary with native plant species.

G. Site Plan

When a use or activity that requires the issuance of a building permit or approval of a land use application is proposed on a parcel within, or partially within the RCWOD, the property owner shall submit a site plan to scale showing the location of the top-of-bank, 100-year flood elevation, jurisdictional delineation of the wetland boundary approved by the Oregon Department of State Lands (if applicable), riparian setback, existing vegetation, existing and proposed site improvements, topography, and other relevant features.

H. Coordination with the Department of State Lands

The Oregon Department of State Lands shall be notified in writing of all applications to the City for development activities, including applications for plan and/or zone amendments, development or building permits, as well as any development proposals by the City that may affect any wetlands, creeks or waterways.

2.05.06 Southwest Industrial Reserve

A. Purpose

The Southwest Industrial Reserve (SWIR) is intended to protect suitable industrial sites in Southwest Woodburn, near Interstate 5, for the exclusive use of targeted industries identified in the Comprehensive Plan. This broad objective is accomplished by master planning, retention of large industrial parcels, and restricting non-industrial land uses.

B. Application of the SWIR Zone

Land designated on the Comprehensive Land Use Plan Map as Southwest Industrial Reserve shall only be zoned SWIR.

C. Dimensional Standards:

The following dimensional standards shall be the minimum requirements for all development within the SWIR zone:

1. Land divisions may only be approved following approval of a master plan, as required in this ordinance.
2. Lots in a SWIR zone shall comply with the standards of Table 2.04F. For a land division, at least one lot shall be sized to meet each of the required lot size ranges listed in Table 2.04F for each site, except that smaller required lots may be combined to create larger required lots.

D. Master Planning Requirement

1. A master development plan shall be approved by the City Council for the entire area designated SWIR on the Comprehensive Land Use Plan Map, prior to annexation of any property within the SWIR Comprehensive Plan Map designation. The master plan shall be conceptual and non-binding in nature, but may be used as a general guide for development within the SWIR.
2. The required master plan shall show:
   a. The location and rights-of-way for existing and planned streets, which shall provide access to all existing and proposed parcels, consistent with the Transportation System Plan;
   b. The location and size of existing and planned sanitary sewer, storm water and water facilities, at adequate levels to serve existing and proposed industrial development;
   c. The location and area of the Riparian Corridor and Wetlands Overlay District (RCWOD) as it affects existing and proposed industrial parcels. Planned streets and public facilities that cannot reasonably avoid the RCWOD shall be indicated;

d. Parcels consistent with the lot sizes indicated in Table 2.05B;

e. Pedestrian and bicycle connections consistent with the TSP.

E. Removal of the SWIR Zone

Removal of the SWIR zone from any area or parcel shall require the following:

1. A revised Economic Opportunities Analysis and Industrial Site Suitability Analysis, consistent with the Goal 9 Rule (OAR Chapter 660, Division 9);
2. A new Statewide Planning Goal 2 Exception that explains why other land within or adjacent to the UGB, that does not require an exception, cannot meet the purported need;
3. A Comprehensive Plan Amendment that demonstrates compliance with all applicable Statewide Planning Goals, applicable goals and policies of the Marion County Framework Plan, and applicable goals and policies of the Comprehensive Plan;
4. A Zoning Map amendment that demonstrates consistency with the Comprehensive Plan.

2.06 Accessory Structures

The purpose of this Section is to set forth the regulations for accessory structures such as fences, walls, storage buildings, detached garages and gazebos.

2.06.01 Applicability
2.06.02 Fences and Walls
2.06.03 Structures

2.06.01 Applicability

The following standards are applicable to accessory structures in all zones.

2.06.02 Fences and Walls

A. Location and Height Abutting a Street

1. The height shall comply with the vision clearance area standards, Section 3.03.06.
2. The height shall not exceed 42 inches (3½ feet) above the curb elevation, when located at the lot line abutting the street. For streets without curbs, the maximum height shall be measured relative to the elevation of the center line of the improved street.
3. The height may increase one foot for each 6 feet of setback from the lot line abutting the street.

B. Height in Yards Not Abutting a Street

1. In residential zones, the maximum height of a fence or wall located in a yard not abutting a street shall be seven feet, relative to the ground elevation under the fence or wall.
2. In commercial, industrial, or public zones, the maximum height of a fence or wall located in a yard not abutting a street shall be nine feet, relative to the ground elevation under the fence or wall.

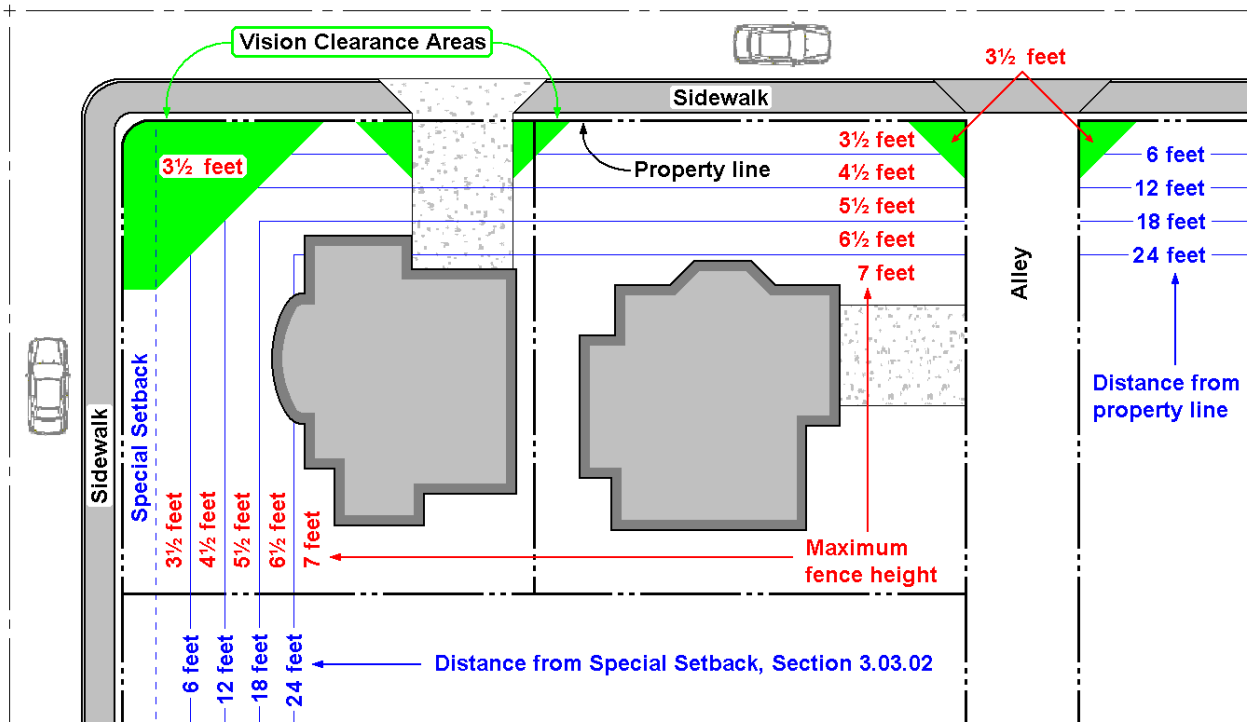


Figure 2.06A – Fence or Wall Height

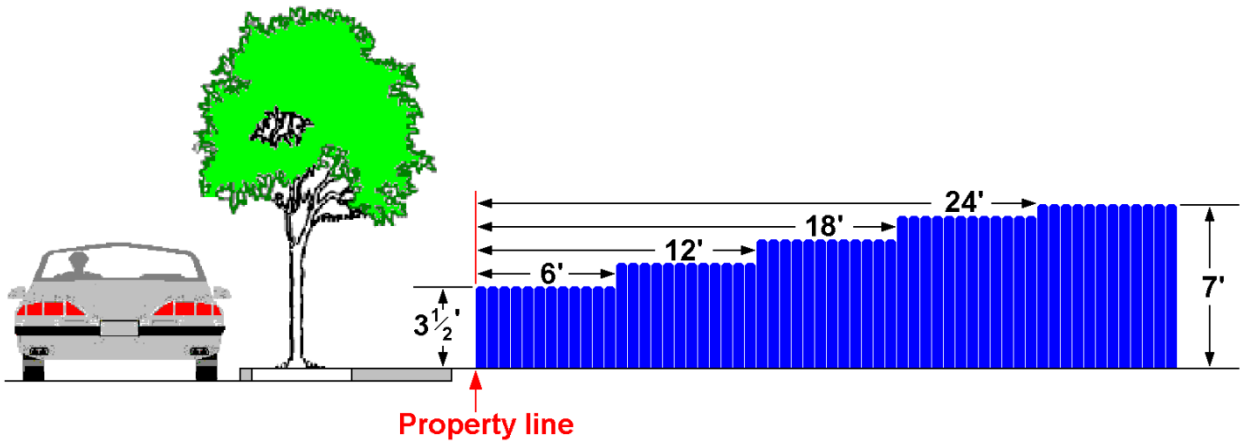


Figure 2.06B – Stepped Fence or Wall

2.06.03 **Structures**

A. Accessory structures attached to a primary building shall be considered as a portion of the primary building and subject to the same requirements as the primary building.

B. The minimum separation between detached accessory structures and the primary building shall be six feet.

2.07 Special Uses

Special Permitted Uses are allowed outright, but are subject to additional requirements designed to ensure their compatibility with, or mitigate their impact on, surrounding (usually residential) development.

2.07.01	General Provisions
2.07.02	Boat, Recreational and Vehicle Storage Pad
2.07.03	Common Boat, Recreational and Vehicle Storage Area
2.07.04	Community Club Buildings and Facilities
2.07.05	Craft Industries
2.07.06	Delivery Services
2.07.07	Duplex
2.07.08	Facilities During Construction
2.07.09	Golf Courses
2.07.10	Home Occupations
2.07.11	House of Worship
2.07.12	Industrial Sales
2.07.13	Manufactured Dwelling Park (MDP)
2.07.14	Manufactured Dwelling on a Lot
2.07.15	Mobile Food Services
2.07.16	Residential Sales Office
2.07.17	Temporary Outdoor Marketing and Special Events
2.07.18	Temporary Residential Sales
2.07.19	Marijuana Dispensaries

2.07.01 General Provisions

A. Application

1. Special uses are subject to specific development standards. These standards are non-discretionary, so special review of a proposed development is not required. The standards contained in this Section apply to Special Uses.

2. The standards contained in this Section may be modified through the Conditional Use process.

B. Development Requirements

Unless specifically modified by the provisions of this Section, special uses are also subject to the development requirements of the underlying zone. Where the special use standard imposes a more restrictive standard, the special use standard shall apply.

2.07.02 Boat, Recreational and Vehicle Storage Pad

Where permitted as a special use in conjunction with a single-family dwelling or duplex, the development of any vehicle, boat, or recreational and vehicle storage pad shall comply with the

following use and development standards:

A. Each dwelling unit shall be limited to a storage pad with the capacity to store a total of two boats, recreational vehicles or these items in combination, in addition to permitted off-street parking.

B. Permitted off-street parking shall not be used to store vehicles, boats or recreational vehicles.

C. The storage pad shall be located in either the side or rear yard.

D. The space shall be paved to the standards of this ordinance (Section 3.04.04) and shall be drained to prevent standing water.

E. The space shall be screened and gated from adjacent property lines and streets (Section 3.06.05).

2.07.03 Common Boat, Recreational and Vehicle Storage Area

A. Applicability

1. When a Boat, Recreational and Vehicle Storage Area is established as a special use, it shall comply with the following use and development standards.

2. When a Boat, Recreational and Vehicle Storage Area is incorporated in the review of a residential development, the following criteria shall serve as guidelines.

B. The storage must be operated by either a homeowners' association or a property manager of the apartment, Manufactured Dwelling Park or residential complex.

C. The storage area is limited exclusively to the storage of the resident's vehicles, boats or trailers, recreational vehicles, utility trailers and horse trailers.

D. Storage areas and driveways to the storage area shall be paved to the standards of this ordinance (Section 3.04.04).

E. Outdoor lighting shall be directed away from residential property and public streets.

2.07.04 Community Club Buildings and Facilities

A. Applicability

1. When Community Club Buildings and Facilities are established as a special use, they shall comply with the following criteria.

2. When Community Club Buildings and Facilities are incorporated in the review of a development, the following criteria shall serve as guidelines.

B. Criteria

1. Swimming pools, tennis courts, and similar sports courts or fields shall be set back 20 feet from a property line abutting a residential zone or use.

2. No off-street parking or loading area shall be permitted within 10 feet of the side and rear lot lines.

3. Outdoor lighting shall be directed away from residential property and public streets.

2.07.05 Craft Industries

A. Primary uses shall be limited to the following:

1. Apparel manufacturing
2. Other leather manufacturing
3. Furniture and related-product manufacturing
4. Sporting goods manufacturing
5. Doll, toy and game manufacturing

B. The use shall have a retail storefront.

C. Outdoor storage, manufacturing, assembly or staging for shipping is prohibited.

D. Manufacturing and/or assembly shall be limited to either 10,000 square feet, or five or fewer full-time equivalent employees, whichever is smaller.

E. The craft industry shall be continuously conducted in such a manner as not to create any off-premise nuisance, including, but not limited to, noise, odors, vibration, fumes, smoke, fire hazards, or electronic, electrical, or electromagnetic interference.

2.07.06 Delivery Services

A. The use shall be limited to the delivery of packages and the sale or delivery of food and beverages.

B. The service shall be transacted from a self-contained, mobile unit.

C. In conducting the sales and service, the mobile unit and delivery personnel shall be required to move to a new location at intervals of 15 minutes or less.

2.07.07 Duplex

A. A duplex shall be located only on a corner lot.

B. The lot shall comply with dimensional requirements of Table 2.02B, 2.02C, 2.02E, or 2.03F.

C. Each dwelling unit shall have pedestrian and vehicular access from different street frontages, unless otherwise approved by the Director.

2.07.08 Facilities During Construction

A. The use shall be limited to mobile offices, temporary power equipment, temporary housing for night security personnel, portable toilets, and equipment storage during construction.

B. All temporary facilities necessary for construction shall be removed prior to final occupancy.

2.07.09 Golf Courses

A. Applicability

1. When a golf course is established as a special use, it shall comply with the following criteria.
2. When a golf course is incorporated in the review of a residential development, the following criteria shall serve as guidelines.

B. Criteria

1. Buildings shall comply with the setback requirements of the underlying zone. Accessory swimming pools, tennis courts, and similar sports courts or fields shall be set back a minimum of 20 feet from a property line abutting a residential zone or use.
2. No off-street parking or loading area shall be permitted within 10 feet of the side and rear lot lines.
3. Outdoor lighting shall be directed away from residential property and public streets.

2.07.10 Home Occupations

Home occupations shall be conducted entirely within a dwelling or accessory structure and shall comply with the following use and development standards:

A. Operations

1. The owner/operator of the home occupation shall reside in the dwelling in which the home occupation is conducted.
2. No outside employees shall work on-site or use the site as a base of operations that requires a daily visit to the site of the home occupation for instructions, assignments or the distribution of tools or other goods.

B. The home occupation shall be continuously conducted in such a manner as not to create any off-premise nuisance, including, but not limited to, noise, odors, vibration, fumes, smoke, fire hazards, or electronic, electrical, or electromagnetic interference.

C. The home occupation shall be conducted entirely within a building.

D. The total floor area devoted to the home occupation shall not exceed 500 square feet.

E. Structural alterations shall be permitted, provided the residential character of the building is not altered.

F. Parking

1. The number of required off-street parking spaces shall not be reduced; however, no additional parking shall be required.
2. The outdoor parking or storage of vehicles licensed as commercial vehicles or displaying commercial advertising shall be prohibited on-site.

G. Visits by suppliers or customers shall be limited to the hours of 8:00 a.m. and 8:00 p.m.

H. Prohibited Activities

1. Vehicle Repair: Repair of vehicles, including automobiles, motorcycles, tractors and similar mechanized equipment, shall be prohibited. Repair of vehicles includes, but is not limited to, mechanical repair, vehicle service, body work, vehicle painting and vehicle detailing.
2. Retail or Wholesale Sales and Distribution: The retail or wholesale sale or distribution of a product or goods shall be prohibited. This prohibition shall not apply to the operation of a business where customers do not come to the site.
3. Marijuana dispensaries.

I. The provisions in this section shall not apply to child care providers.

2.07.11 House of Worship

Bus and Van Storage: Storage of buses and vans used by a house of worship shall be permitted if the vehicles are not parked closer than 20 feet to a property line abutting a residential zone or use.

2.07.12 Industrial Sales

A. Permitted Uses

The use shall be limited to:

1. Manufactured dwelling dealers
2. Motor vehicle and parts dealers including new car, used car, recreational vehicle, motorcycle, boat, parts and tire dealers
3. Tractor and farm machinery and equipment dealers
4. Farm, garden and landscaping supplies

B. The site for the use shall be located in an IP zone within 500 feet of Pacific Highway 99E.

C. The use is subject to site plan review and all development standards of the Woodburn Development Ordinance, including the standard that any area that is not landscaped shall be paved.

2.07.13 Manufactured Dwelling Park (MDP)

A. Applicability of Design and Improvement Standards

1. The design and improvement standards of this Section are applicable to all Manufactured Dwelling Parks.
2. All standards established by state statute (ORS 197.307 and ORS Chapter 446) and/or state administrative rule OAR 918-600). Deviation from these state standards is governed by these statutes and rules.
3. All Manufactured Dwelling Parks, and manufactured dwellings in those parks,

established prior to the adoption of the Woodburn Development Ordinance (WDO), have nonconforming status under the WDO.

B. Design and Improvement Standards

1. The minimum site area for a manufactured dwelling park shall be 1.0 acres.
2. The required setback from a perimeter property line shall be 20 feet.
3. The minimum area for each manufactured dwelling space shall be 3,600 square feet.
4. Dimensions of a Park Space
   a. Minimum Width: 30 feet.
   b. Minimum Length: 40 feet.
5. Each manufactured dwelling space shall have direct unobstructed access to a street.
6. Parking
   a. One parallel parking space on an abutting private street may be counted toward the required off-street parking for a manufactured dwelling.
   b. Parking spaces shall comply with this Ordinance (Table 3.05C, Parking Space and Drive Aisle Dimensions).
   c. Driveways shall comply with this Ordinance (Table 3.04A, Access Requirements).
   d. Parking spaces and driveways shall be improved to the standards of this Ordinance (Section 3.04.04).
7. Storage of boats and recreational vehicles is prohibited, except in a Boat and Recreational Vehicle Storage Area.
8. Play Area
   a. Area Ratio: 100 square feet per manufactured dwelling space, but not less than 2,500 square feet
   b. A play area shall not be required for manufactured dwelling parks established prior to March 13, 1989 as an all-adult park.
9. Park Streets
   a. Ownership: Private
   b. Connectivity: The park street system shall connect to a public street.
   c. Paved Width
      1. Without on-street parking, 20 feet.
      2. With on-street parking, 30 feet.
   d. Sidewalks, Curbs and Drainage: Sidewalks, curbs and drainage for park streets shall be designed to the local street standards of Section 3.301.
   e. Block Length: The block length and the length of cul-de-sac streets shall comply with the standards of Section 3.301.
10. Manufactured Dwelling Design Standards
    a. Roof Pitch: Each manufactured dwelling shall have a pitched roof with a slope no

less than a nominal 3 feet in height for each 12 feet in width.

b. Siding and Roofing: Each manufactured dwelling shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the "predominant materials used in surrounding dwellings".

11. Each manufactured dwelling space shall be addressed off a park street.

MDP Separation Matrix

Table 2.07A

	Manufactured Dwelling	Accessory Building	Accessory Structure
Perimeter property line	20 feet	20 feet	20 feet
Interior property line	5 feet	5 feet	5 feet
Park street	5 feet	5 feet	5 feet
Park sidewalk	2 feet	2 feet	none
Manufactured dwelling on the same lot	10 feet [1, 2]	3 feet	none
Manufactured dwelling on an adjacent lot	10 feet	6 feet	6 feet
Buildings on the same property	10 feet	6 feet	6 feet
Accessory buildings on the same lot	3 feet	3 feet	none
Accessory building on an adjacent lot	6 feet	6 feet	6 feet
Accessory structures on the same lot	none	none	none
Accessory structures on an adjacent lot	6 feet	6 feet	6 feet

1. The Building Official may approve reduced setbacks and clearances that are different than the dimensions in this table with the use of fire-resistant construction, according to the prescriptive requirements in the Oregon Residential Specialty Code.
2. Additional requirements in OAR 918-500-0530 may be applicable.

Note: This table is adapted from Table 11-2.3, Minimum Setbacks and Fire Separation Inside Parks, from the Oregon Manufactured Dwelling Installation Specialty Code, 2010 edition.

2.07.14 Manufactured Dwelling on a Lot

A manufactured dwelling located on an individual lot outside of a Manufactured Dwelling Park shall comply with Architectural and Design Standards (Section 3.07.02 or 3.07.03) with the following exceptions:

A. The manufactured dwelling shall have been manufactured after June 15, 1976, and exhibit the Oregon Department of Commerce "Insignia of Compliance" that indicates conformance with Housing and Urban Development (HUD) standards.

B. The manufactured dwelling shall be multi-sectional and enclose a space of not less than 1,000 square feet.

C. The manufactured dwelling shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured dwelling is located not more than 12 inches above grade.

D. The manufactured dwelling shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards equivalent to the performance standards required of single-family dwellings constructed under the State Building Code, as defined in ORS Chapter 455.

2.07.15 Mobile Food Service

A. The use shall be limited to the preparation and/or sale of food and beverages from a vehicle or trailer.

B. Business Operations

1. Shall not be conducted within public rights-of-way
2. Shall be conducted on property with the written consent of the property owner

C. The use shall not block driveways, entrances or parking aisles.

D. The base of operations for mobile food service units shall be inside the industrial zones. Use of sites in residential zones for the preparation, maintenance, or storage area for mobile food service units is prohibited.

2.07.16 Residential Sales Office

A. The office shall be located on a lot within a subdivision or planned development, or on a space within a manufactured dwelling park.

B. The principal use of the office shall be the sale of lots, renting of spaces, or the sale of dwellings or manufactured dwellings on lots or spaces within the development.

C. The office shall have a finished exterior and the site must be landscaped.

D. Business shall be conducted between 8:00 a.m. to 8:00 p.m.

2.07.17 Temporary Outdoor Marketing and Special Events

A. Permitted Uses

1. Seasonal sales of fireworks, Christmas trees, produce or plant materials, except marijuana
2. Amusement rides and games
3. Entertainment
4. Any other merchandise or service except marijuana dispensaries

B. Duration

1. Single events shall be limited to a maximum duration of three consecutive days, with all goods, temporary facilities and signs removed within 24 hours of closing on the last day of each event.
2. Recurring events shall be limited to a maximum duration of one day, with all goods, temporary facilities and signs removed within 24 hours of each event. Events may reoccur once per week for a maximum of 24 weeks.
3. Seasonal sales shall be limited to two events, with each event not exceeding more than 30 consecutive days.

C. Events shall only be conducted between the hours of 8:00 a.m. and midnight.

D. The use shall not block driveways, entrances or parking aisles.

E. The required parking for all other uses of the property shall not be diminished below that required by this ordinance (Section 3.05).

F. The use shall conform to all setback standards for the zone.

G. Responsibilities

1. The event operator:
   a. Shall possess a valid special event permit for each event;
   b. Shall be responsible for compliance with use standards, crowd and traffic control, and for sanitation, including rest rooms, waste disposal, and cleanup.
2. The operator of a special use shall possess valid certification of compliance for all applicable health, sanitation and safety standards of the City and other applicable jurisdictions.

H. The temporary outdoor marketing and special events shall not be located within a public right-of-way unless authorized by the appropriate jurisdiction (City of Woodburn, Marion County, or the Oregon Department of Transportation).

I. Existing businesses with outdoor product display areas are not required to obtain a Temporary Outdoor Marketing and Special Events permit, but are limited to the following:

1. Products sold within the primary building;
2. Covering no more than ten percent of the gross square footage of the buildings on the property;
3. Retaining a minimum of four feet for pedestrian clearance along any adjacent walkway.

2.07.18 Temporary Residential Sales

A. Permitted Uses

1. Produce and plant materials grown on the subject property
2. Estate, garage and yard sales
3. Crafts and other hobby items

B. Number of Sales per Year

1. Estate, garage, yard, craft and hobby sales

   a. The number of sales, in any combination, conducted at the same site, shall not exceed three in any calendar year.

   b. The duration of each sale period shall not exceed three consecutive days.

2. A sale of produce and plant materials grown on-site shall be limited to one event, no longer than 60 days in duration.

C. Sales shall be conducted between the hours of 8:00 a.m. and 8:00 p.m.

D. All signs shall be taken down the day the sale ends.

2.07.19 <u>Marijuana Dispensaries</u>

A. The dispensary shall not be located within 1,000 feet of the real property comprising:
   1. a public or private elementary, secondary or career school attended primarily by minors;
   2. a child care facility;
   3. a public park or public recreational facility;
   4. property designated residential on the Comprehensive Plan Map;
   5. another marijuana dispensary;

B. The dispensary shall be located entirely within a permanent building.

C. Drive-through service is prohibited.

D. Maximum allowed gross floor area for a dispensary is 3,000 square feet.

E. Enhanced exterior security lighting is required for a dispensary.

2.08 Specific Conditional Uses

The purpose of this Section is to establish additional development standards for specific uses which are allowed conditionally. These standards are intended to mitigate the impacts of the particular use when allowed through the Conditional Use process.

2.08.01 General Provisions
2.08.02 Historically and Architecturally Significant Buildings
2.08.03 Telecommunications Facilities

2.08.01 General Provisions

A. Specific conditional uses require conditional use approval that is subject to:

1. The supplementary conditional use approval criteria specified in this Section;
2. Additional conditions of development found to be appropriate to mitigate impacts of a particular use;
3. Development standards of the underlying zone, unless the specific conditions of approval set higher standards.

B. The specific development standards for each type of conditional use listed in this Section are mandatory. Any deviation from these standards shall comply with criteria for a variance.

C. The provisions of this Section shall not apply to those uses allowed outright in a particular zone.

2.08.02 Historically and Architecturally Significant Buildings

Certain non-residential uses are permitted as specific conditional uses in the RS and RM zones, in order to preserve historic and architectural resources by allowing an increase in the intensity of use. The conditional use process is intended to strike a balance between providing the economic incentive to restore and maintain the resource, and mitigating any negative impacts of the proposed use on surrounding uses.

A. Criteria for Building Designation
To qualify for designation as a historically or architecturally significant building, the building shall meet one or more of the following criteria:

1. Be designated on the “National Register of Historic Places” published by the U.S. Department of Interior, or any other inventory of historic structures acknowledged by the State Historic Preservation Office;
2. Be designated an architecturally significant building or awarded recognition for meritorious design by a recognized professional design organization;
3. Be designated in the cultural resource inventory of the Comprehensive Plan as a historically or architecturally significant building.

B. Supplemental Conditional Use Approval Criteria

1. The building is designated historically or architecturally significant, pursuant to this Section;
2. The more intensive use of the building is necessary to maintain and preserve its continued existence;
3. In addition to the uses permitted in the underlying zoning district, adaptive reuse of the property may be allowed to a more intensive use. Such adaptive reuse of the property shall be limited to the uses specified in this Section.
4. The scope and intensity of negative impacts associated with the proposed use can be suitably conditioned to mitigate adverse affects on adjoining uses.

C. Adaptive Reuses Permitted:

1. Additional dwelling units, limited to three dwelling units in an RS zone
2. Retail trade
    a. Art gallery
    b. Clothing and accessory stores
    c. Picture frame shop
3. Professional services
    a. Legal services
    b. Accounting
    c. Architects and engineers
    d. Specialized design services
    e. Computer system design
    f. Management consulting
    g. Advertising
4. Management and support services
    a. Telephone answering service
5. Health care and social assistance
    a. Physician, dentist, and other health practitioner offices
    b. Child day care services
    c. Other individual and family services
6. Accommodations, limited to two guest rooms
    a. Bed-and-breakfast inn

D. Development Standards

1. All proposed exterior alterations of the building, additions to the building and addition

of structures on the same site, shall maintain the visible architectural and/or historical features and design character that identify the building as a designated resource.

2. Adaptive re-use limits on-site employees to a maximum of three.

2.08.03 Telecommunications Facilities

All telecommunication facilities shall be regulated by the provisions of this Section of the Woodburn Development Ordinance (WDO). In the event of any conflict between this and other sections of the WDO, the most restrictive provisions shall control.

A. Definitions

Aerial: A privately owned and operated antenna for non-commercial uses, subject to height limitations as specified in the WDO. Aerial includes "amateur radio antennae", but is not a "telecommunications facility".

Ancillary Facilities, Telecommunications: The structure and equipment required for operation of the telecommunication equipment, including, but not limited to, antenna(e), repeaters, equipment housing structures, and ventilation and other mechanical equipment.

Antenna(e), Telecommunications: An electrical conductor or group of electrical conductors that transmit or receive radio waves for commercial uses.

Attachment, Telecommunications: An antenna or other piece of related equipment affixed to a transmission tower.

Collocated Telecommunications Facilities: The attachment of new or additional transmission facilities to an existing transmission tower designed for such multiple use.

Exchange Carrier: A provider of telecommunications services.

Guyed Tower, Telecommunications: A transmission tower on which cables (guy wires) are permanent.

Lattice Tower, Telecommunications: A transmission tower constructed of lateral cross members.

Monopole, Telecommunications: A transmission tower consisting of a single upright pole support that does not require guy wires or lateral cross.

Pre-existing Towers and Pre-existing Antenna(e), Telecommunications: Any tower or antenna for which a building permit has been properly issued, prior to passage of the WDO.

Repeater, Telecommunications: Equipment containing both a receiver and a transmitter; used to relay radio signals over large distances or to provide signals in an area which would otherwise be in a shadow.

Shadow, Telecommunications: A geographic area that has less than adequate telecommunication service coverage.

Telecommunications Facilities: Facilities designed and used for the purpose of transmitting and receiving voice and data signals from various wireless communications devices.

Telecommunications Facilities, New: The installation of new transmission towers. New attachments are not new facilities.

Tower Footprint, Telecommunications: The area described at the base of a transmission tower as the perimeter of the transmission tower, including the transmission tower foundation and any attached or overhanging equipment, attachments, or structural members, but excluding ancillary facilities and guy wires and anchors.

Tower Pad, Telecommunications: The area that encompasses the tower footprint, ancillary facilities fencing and screening.

Tower Height, Telecommunications: The vertical distance from the highest point on the transmission tower to the original grade of the ground directly below.

Transmission Tower, Telecommunications: The structure on which receiving antennae are located.

B. Standards of Approval

1. All new telecommunications facilities shall be located on a property of sufficient size to comply with the following:

   a. A setback from all property lines to the tower, which is at least two-thirds the tower height. This standard shall not apply to collocated telecommunications facilities.

   b. A tower pad large enough to allow for additional collocated and ancillary facilities. The tower or towers shall be located centrally on this pad. This standard shall not apply to antenna(e) attached to existing structures or towers located on rooftops.

   c. Protection to adjoining property from the potential impact of tower failure and ice falling from the tower. A registered structural engineer's analysis shall be submitted that demonstrates that the site and facility adequately accommodate measures to mitigate these hazards.

   d. Separation from pre-existing towers. Tower separation shall be measured by following a straight line from the base of the proposed tower to the base of any pre-existing tower. Minimum separation distances shall be as indicated in Table 2.204A.

Minimum Separation Among Telecommunication Facilities
Table 2.08A

	Lattice Tower	Guyed Tower	Monopole 80 or more feet in height	Monopole less than 80 feet in height
Lattice Tower	500 feet	500 feet	150 feet	75 feet
Guyed Tower	500 feet	500 feet	150 feet	75 feet
Monopole 80 or more feet in height	150 feet	150 feet	150 feet	75 feet
Monopole less than 80 feet in height	75 feet	75 feet	75 feet	

2. Collocation

   a. Before a proposal for a new transmission tower is considered, an applicant shall exhaust all collocation options, including placement of antennae on existing tall structures and multiple antennae or attachments on a single tower. In cases where an existing tower is modified or rebuilt to a taller height to allow collocation, such change may only occur one time per communication tower site and may only occur

when the modification or rebuild request has been initiated by a separate exchange carrier.

b. New telecommunication facilities shall be constructed so as to accommodate future collocation, based upon expected demand for transmission towers in the service area. Towers shall be designed so as to accommodate a minimum expansion of three two-way antennae for every 40 vertical feet of tower.

c. Replacement of existing pole type structures may be permitted for the purpose of collocation, provided that there is no change to the type of tower. Setback and other location criteria of the underlying zone shall still apply.

3. Multiple Attachments on Utility Poles: In conformance with the Telecommunications Act of 1996, Section 703, a utility shall provide any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it, unless there is insufficient capacity, or access cannot be granted for reasons of safety, reliability, and generally applicable engineering purposes.

4. Height: New telecommunication facilities shall not exceed the height limits established by the underlying zone.

5. Visual Impact: The applicant shall demonstrate that the tower will have the smallest practicable visual impact on the environment, considering technical, engineering, economic and other pertinent factors.

   a. The height and mass of the transmission tower shall not exceed that which is essential for its intended use and public safety, as demonstrated in a report prepared by a registered structural engineer.

   b. Towers 100 feet or less in height shall be painted, in order to best camouflage the tower with regard to compatibility with surrounding objects and colors. Unless towers are otherwise disguised or collocated, towers shall be camouflaged as trees whenever structurally possible.

   c. Towers more than 100 feet in height shall be painted in accordance with the Oregon State Aeronautics Division and Federal Aviation Administration standards, unless an appropriate waiver is obtained. Where a waiver has been granted, towers shall be painted and/or camouflaged in accordance with Section 2.08.03.A.5.b.

6. Accessory Uses: Accessory uses shall include only buildings and facilities that are necessary for transmission functions and associated satellite ground stations, and shall not include broadcast studios (except emergency broadcast), offices, vehicular storage areas, or other similar uses not necessary for the transmission or relay functions. No unenclosed storage of materials is allowed.

7. Lighting: No lighting shall be permitted on transmission towers, except that required by the Oregon State Aeronautics Division or Federal Aviation Administration. This standard shall not prevent shared use or replacement of an existing light pole. For collocation on existing or replaced light poles the transmission tower shall have no net increase to the spread, intensity or direction of the existing light source.

8. Noise: Noise generated by equipment shall be sound-buffered by means of baffling, barriers, or other suitable means, to reduce the sound level measured at the property line

to 30 dBA when adjacent to residential uses and 45 dBA in other areas.

9. Fences and Landscaping:

   a. The tower(s) and ancillary facilities shall be enclosed by a six foot fence meeting the requirement of the WDO. Chain link fences, when allowed, shall have a green vinyl coating. Where a six foot fence in sound condition already exists on a side or sides of the tower pad area, fencing requirements may be waived for that side.

   b. Landscaping shall be placed outside of fences and shall consist of fast-growing vegetation, with a minimum planted height of six feet, placed densely so as to form a solid hedge.

   c. Landscaping and fencing shall be compatible with other nearby landscaping and fencing.

   d. Where antenna(e) or towers and ancillary facilities are to be located on existing buildings or structures and are secure from public access, landscaping and fencing may be waived.

10. Signs: One unilluminated sign, not to exceed two square feet in area, which states the contact name and phone number for emergency purposes shall be provided at the main entrance to the facility. Signs shall not be placed on towers and antennae.

C. Abandoned Facilities:

1. When the use of a transmission facility is discontinued for a period of six or more consecutive months, the facility is deemed abandoned. Abandoned facilities shall be removed by the property owner no later than 90 days from the date of abandonment.

2. Failure to remove an abandoned facility is declared a public nuisance and is subject to abatement, pursuant to the Woodburn Nuisance Ordinance and all other applicable legal remedies.

3. Upon written application prior to the expiration of the six month period, the Director shall grant a six month extension for reuse of the facility. Additional extensions beyond the first six month extension may be granted by the Director, subject to any conditions required to bring the project into compliance with current laws and to make it compatible with surrounding development.

3.01 Streets

The purpose of this Section is to provide for safe and efficient streets within the City, and to implement the Woodburn Comprehensive Plan and the Transportation System Plan (TSP). The provision of streets is guided by the goals and policies of the Comprehensive Plan, the TSP, and other sections of the Woodburn Development Ordinance.

3.01.01	Applicability
3.01.02	General Provisions
3.01.03	Improvements Required for Development
3.01.04	Street Cross-Sections
3.01.05	Street Layout
3.01.06	Street Names

3.01.01 Applicability

A. Rights-of-way standards apply to all public streets.

B. Improvement standards apply to all public and private streets, sidewalks and bikeways.

C. Functional standards are identified in the Woodburn TSP.

D. This applies to all development, and is not limited to partitions, subdivisions, multi-family, commercial or industrial construction, or establishment of a manufactured dwelling or recreational vehicle park. Construction of a single-family dwelling or placement of a manufactured dwelling does not, for the purposes of this Section, constitute development.

3.01.02 General Provisions

A. No development shall be approved, or access permit issued, unless the internal streets, boundary streets and connecting streets are constructed to at least the minimum standards set forth in this Section, or are required to be so constructed as a condition of approval.

B. Private streets are prohibited, except in manufactured dwelling parks, pursuant to State statute (ORS Chapter 446 and OAR 918-600). All private streets in manufactured dwelling parks shall comply with the standards of the Woodburn Development Ordinance (WDO) and State statute.

C. Materials and construction shall comply with specifications of the City of Woodburn.

D. The standards of this Section may be modified, subject to approval of an Exception to Street Right-of-Way and Improvement Requirements.

3.01.03 Improvements Required for Development

A. With development, the Internal, Boundary, and Connecting streets shall be constructed to at least the minimum standards set forth below.

B. Internal Streets

Internal streets shall meet all standards of WDO and the TSP.

C. Boundary Streets

The minimum improvements for a Boundary Street shall be:

1. One paved 11-foot travel lane in each direction;
2. On-street parking on the side of the street abutting the development, if on-street parking is indicated in the TSP;
3. Curb on the side of the street abutting the development;
4. Drainage facilities on the side of the street abutting the development;
5. Street trees on the side of the street abutting the development; and
6. A sidewalk on the side of the street abutting the development.

D. Connecting Streets

1. The minimum improvements for a Connecting Street shall be one paved 11-foot travel lane in each direction.
2. Connecting streets shall extend from the boundary street of a development, to the nearest intersection that meets the cross-section and improvement requirements of this Section, or 1,000 feet, whichever is less.

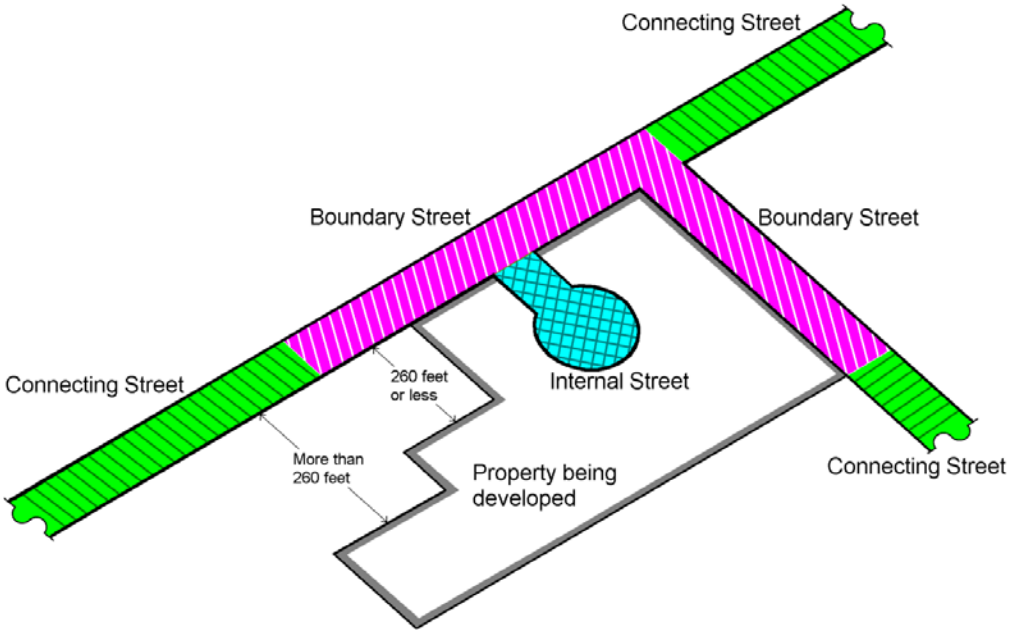


Figure 3.01A – Internal, Boundary, and Connecting Streets

E. When the Director determines that a required improvement of a Boundary or Connecting Street would not be timely, due to pending development of properties in the immediate vicinity or improvement of the streets which are identified in the Capital Improvement Program (CIP), the Director may accept a fee-in-lieu, in the amount equal to the costs of the required improvement.

F. When the Director determines that a required improvement of a Boundary or Connecting Street would not be feasible, due to physical constraints of properties in the immediate vicinity or an inability to obtain right-of-way dedication, the Director may approve construction of a partial-width street, to the minimum standards set forth above.

3.01.04 Street Cross-Sections

A. These standards are based on the functional classification of each street as shown in the Woodburn TSP. The street right-of-way and improvement standards minimize the amount of pavement and right-of-way required for each street classification, consistent with the operational needs of each facility, including requirements for pedestrians, bicycles, and public facilities.

B. All public streets under the jurisdiction of the City of Woodburn shall comply with the cross-sections depicted in this Section.

1. For the cross-section illustrated in Figure~~s~~ 3.01G-J, the street shall have fewer than 1,000 average daily trips (ADT) per day when all future street connections are made.

2. The cross-section illustrated in Figure 3.01H, is optional in infill situations, or where adjacent streets are similarly constructed. Street trees shall be located in a street tree easement outside the public right-of-way.

3. Figures 3.01K-N illustrate one-way and two-way traffic concepts for downtown streets.

C. For local residential streets which are not identified in the Comprehensive Plan, rights-of-way and improvements are determined by the Director at the time of development, based upon the existing and future estimated average daily trips of the development and surrounding development.

D. Streets designated as Arterials or Collectors in the TSP which are located within the Historic Settlemier Transportation Corridor do not require bicycle lanes or a center turn lane, unless the Director determines that a turn lane is warranted for safety reasons. The existing pavement should be used to the extent possible to preserve the historic corridor.

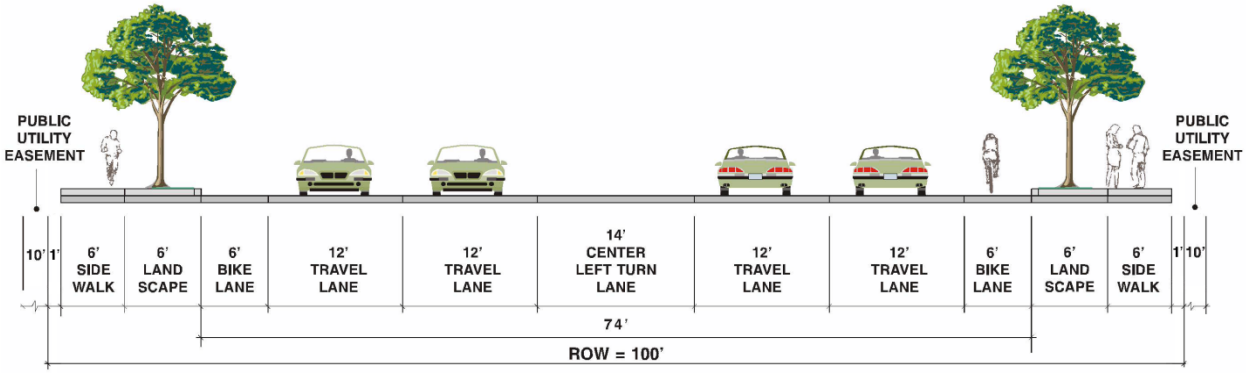


Figure 3.01B – Major Arterial

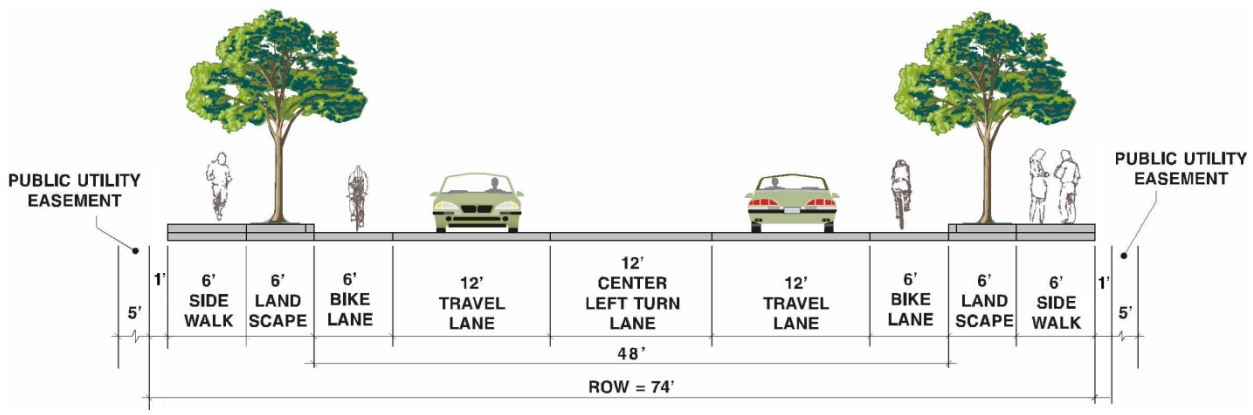


Figure 3.01C – Minor Arterial

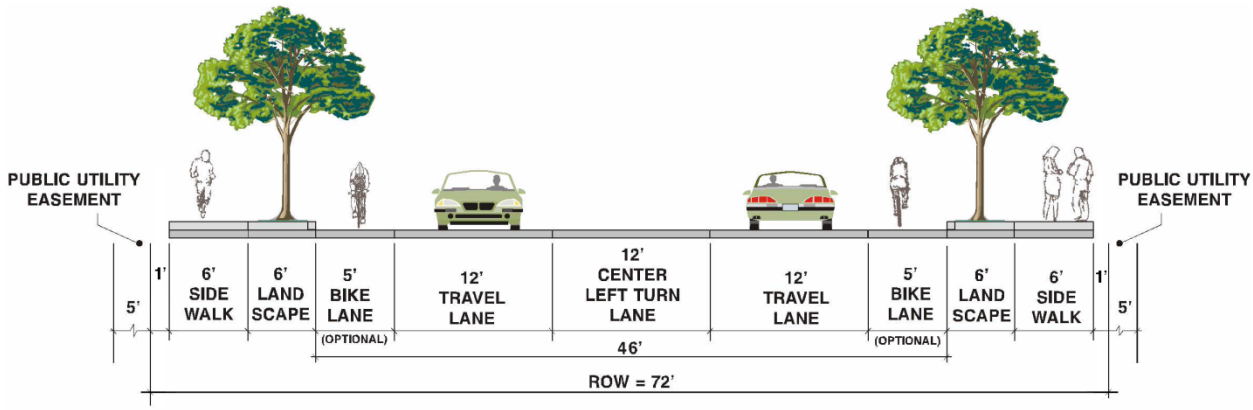


Figure 3.01D – Service Collector

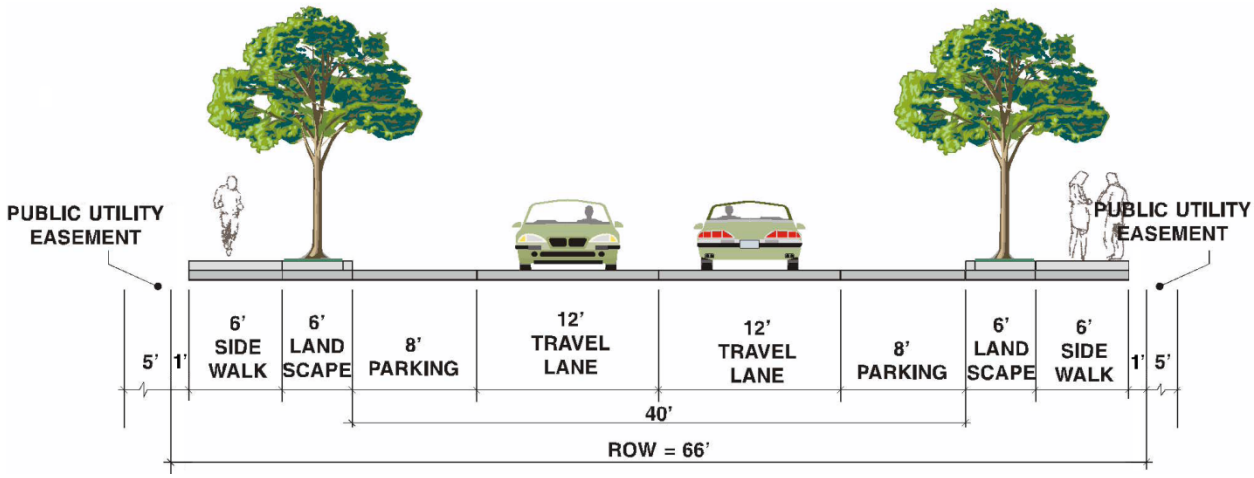


Figure 3.01E – Access Street / Commercial Street

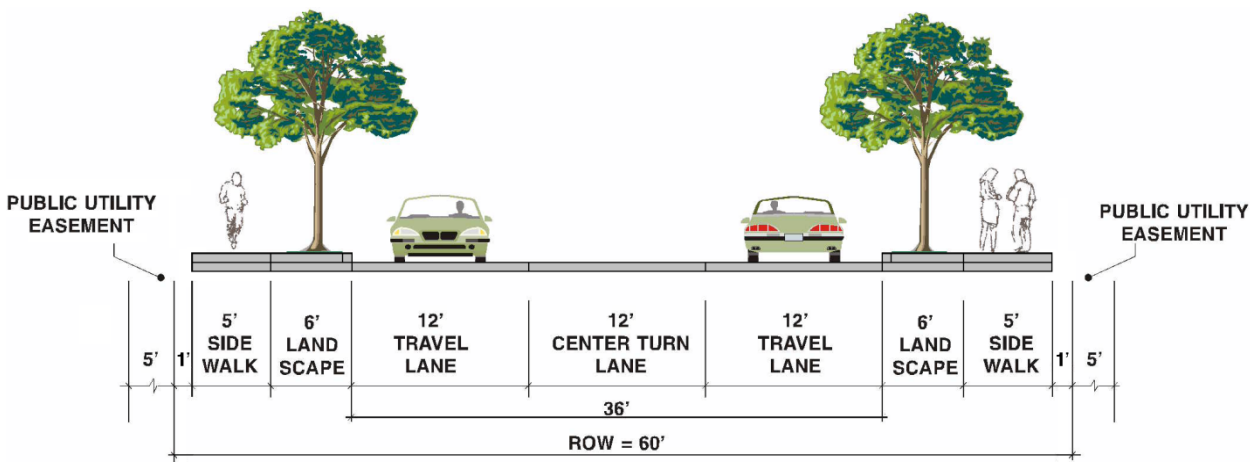


Figure 3.01F – Local Industrial Street

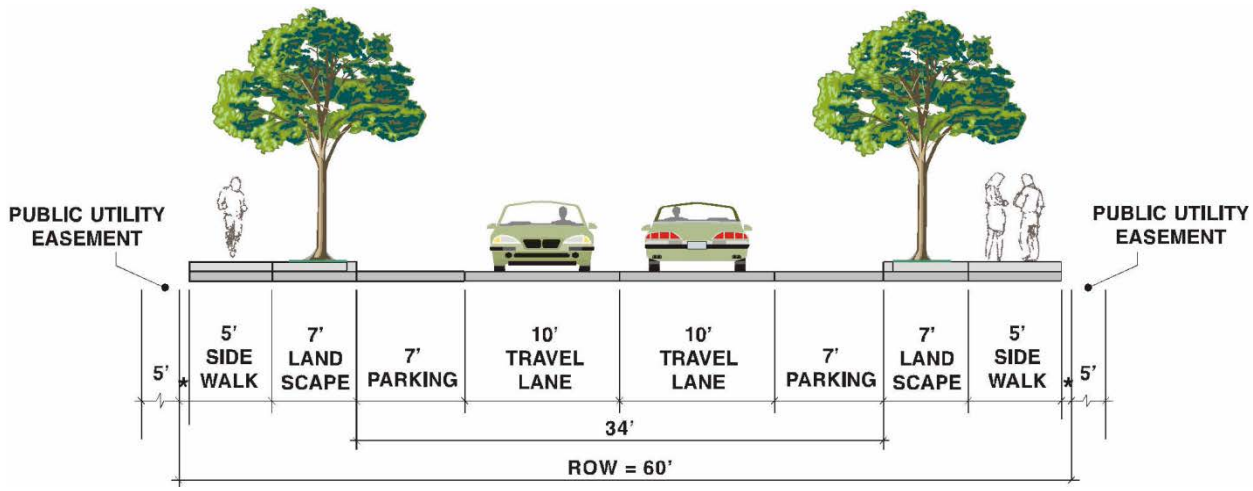


Figure 3.01G – Local Residential Street with Parking Both Sides, 60 Foot Right-of-Way

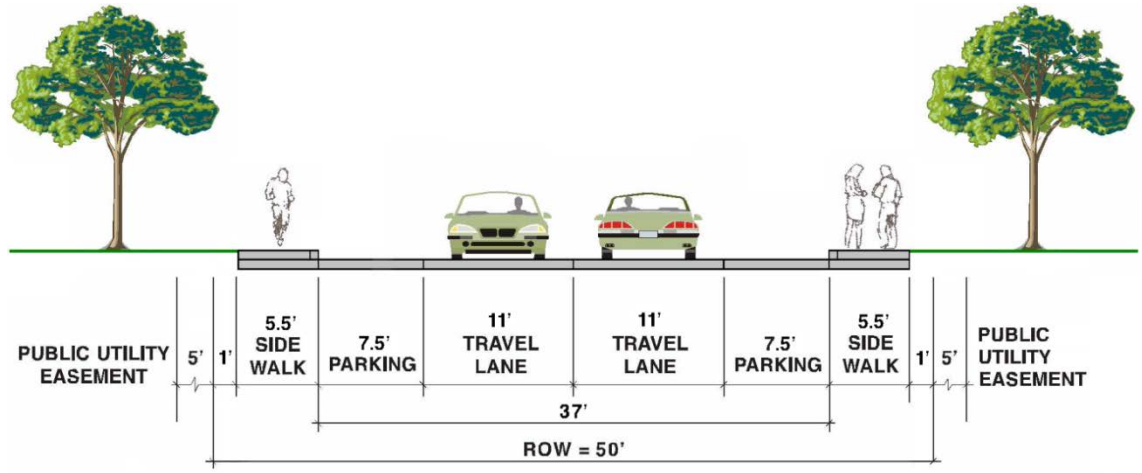


Figure 3.01H – Local Residential Street with Parking Both Sides, 50 Foot Right-of-Way

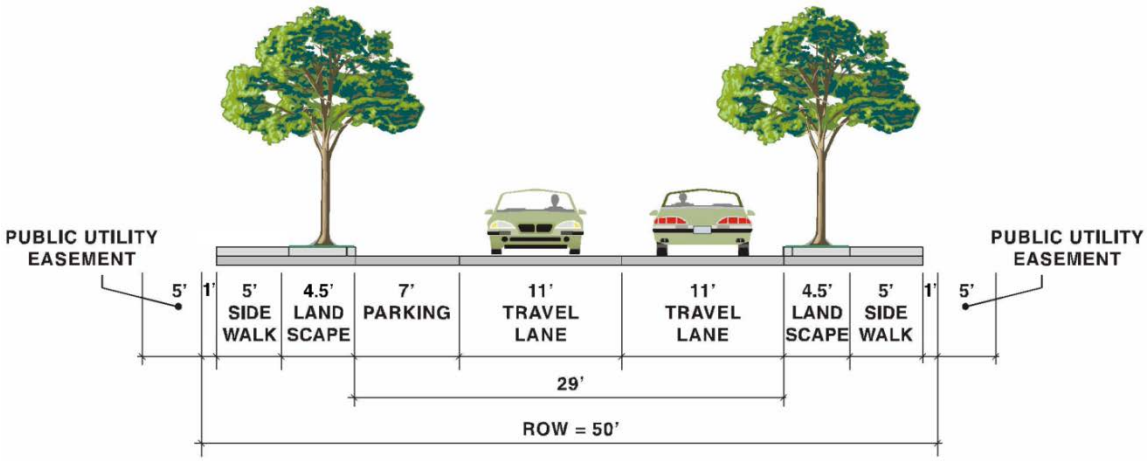


Figure 3.01I – Local Residential Street with Parking One Side

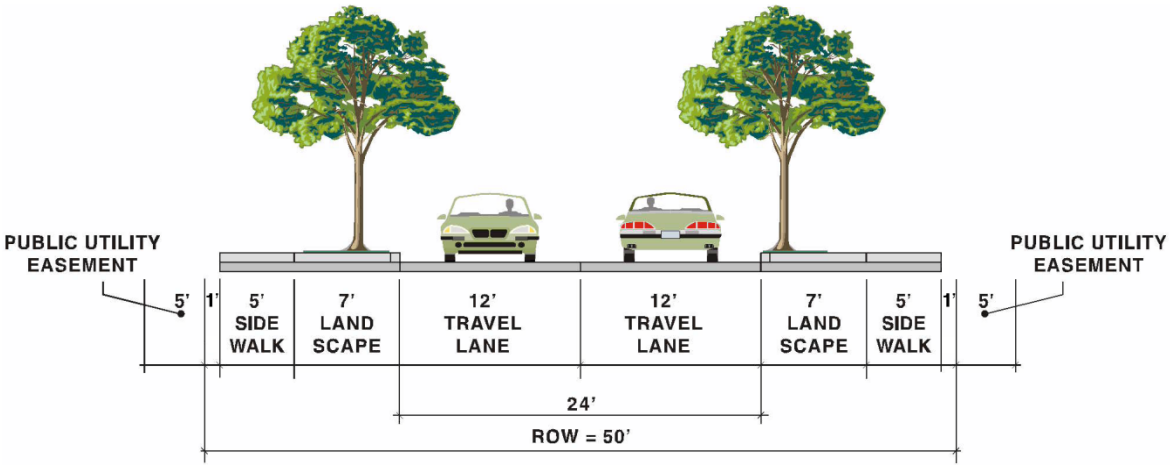


Figure 3.01J – Local Residential Street with No Parking

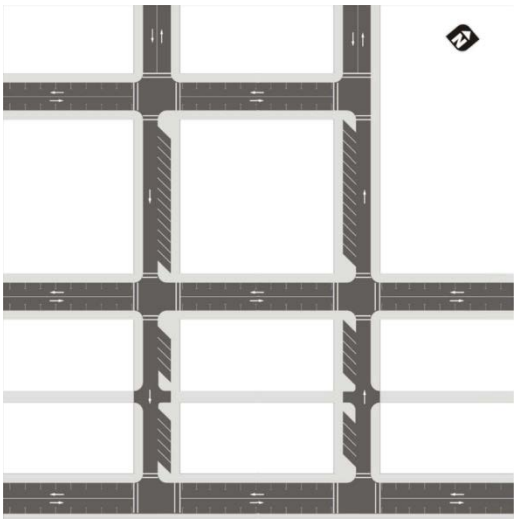


Figure 3.01K – Traffic Concepts for Downtown Streets, One-Way and Two-Way Design

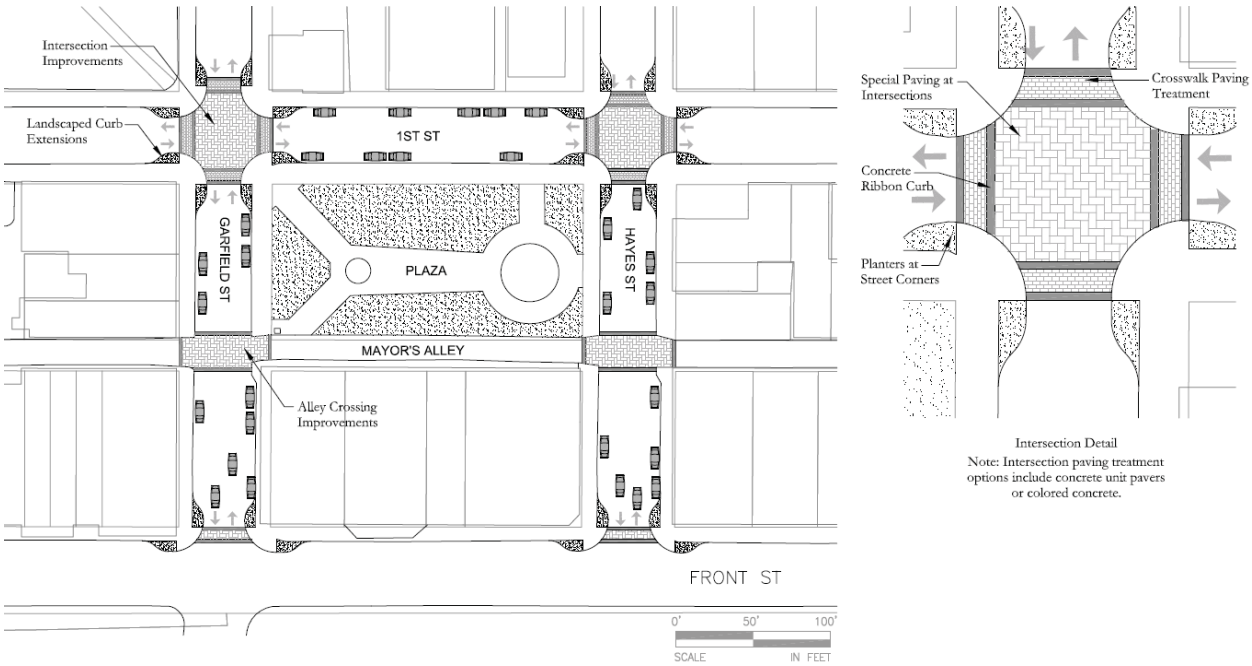


Figure 3.01L – Plaza Street Plan – Two-Way Traffic Concept

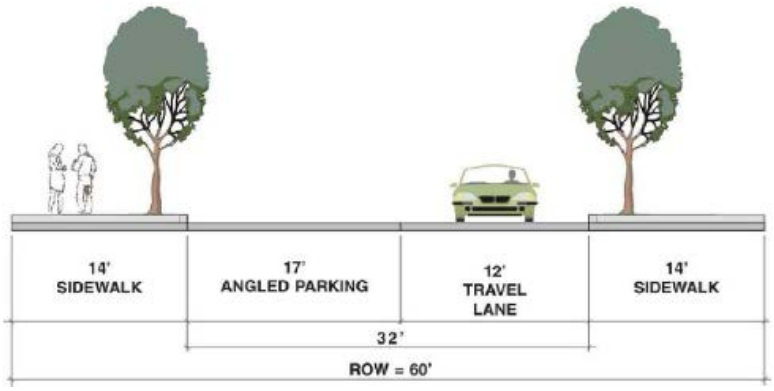


Figure 3.01M – One-Way with Angled Parking

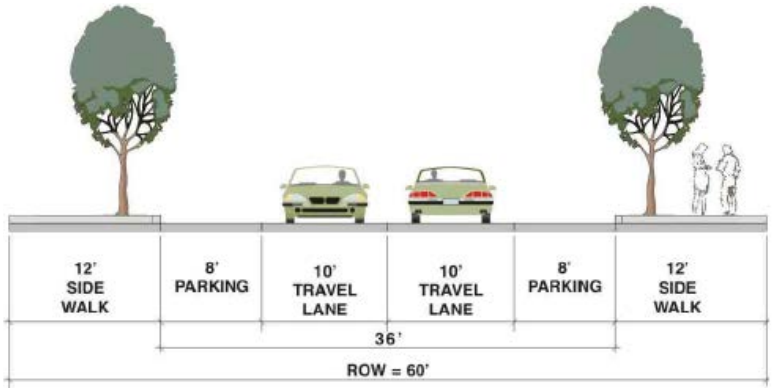


Figure 3.01N – Two-Way with Parallel Parking

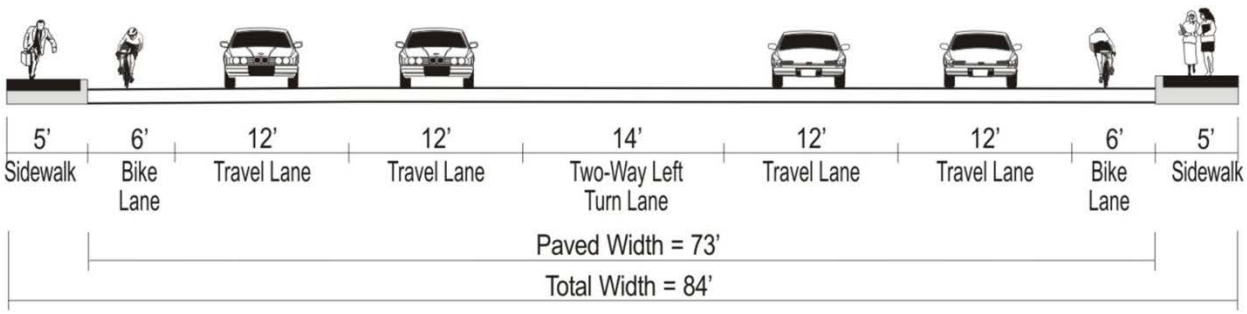


Figure 3.01O – Pacific Highway 99E
Carl Road to Lincoln Street (MP 30.85 to MP 32.41)

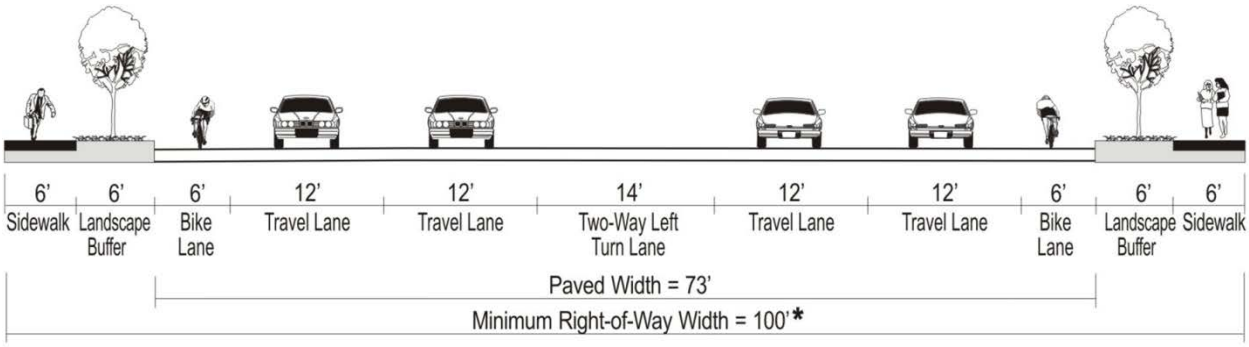
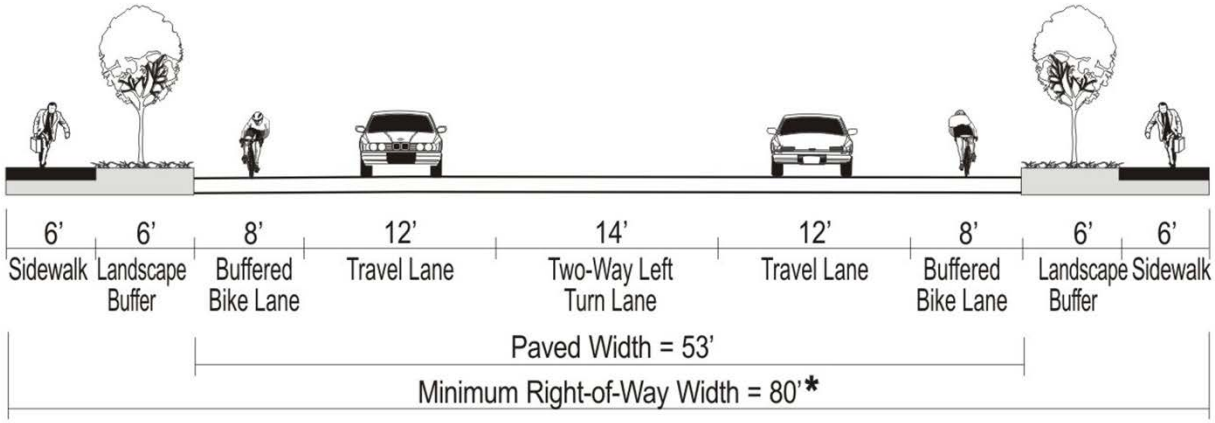


Figure 3.01P – Pacific Highway 99E
Lincoln Street to 600 Feet South of Cleveland Street (MP 32.41 to MP 33.08**)



** One foot of right-of-way outside each sidewalk is needed for operational purposes.*
*** Transition between five-lane and three-lane roadways to occur between MP 33.08 and MP 33.19.*

Figure 3.01Q – Pacific Highway 99E
1,150 Feet South of Cleveland Street to South UGB (MP 33.19** to MP 34.07)

3.01.05 Street Layout

A. Termination of Streets, Bikeways and Pedestrian Ways

1. Cul-de-sac Streets

   a. The maximum length of a cul-de-sac street shall be 250 feet. Cul-de-sac length shall be measured along the center line from the nearest right-of-way line of the nearest intersecting street, to the point of curvature of the cul-de-sac bulb.

   b. The minimum radius of a cul-de-sac bulb right-of-way shall be 55 feet.

   c. The minimum improved street radius of a cul-de-sac shall be 48 feet plus curb, planting strip and sidewalk.

   d. *The Director may require bikeway and pedestrian facilities to connect from one cul-de-sac to an adjacent cul-de-sac or street, except where the cul-de-sac abuts developed property, or where the Director determines* that there is no need for a connection.

2. Temporary Dead End Streets

   Streets extensions that result in temporary dead end streets, or stub streets, shall:

   a. Be extended to the adjoining tract when it is necessary to give access to, or permit, a future division of adjoining land;

   b. Require a barricade at the end of the street to be installed and paid for by the property owners. It shall not be removed until authorized by the City of Woodburn.

   c. Have an all-weather sign at the temporary street terminus, installed by the property owners, that states: “This Street is Planned for Future Extension”.

   d. Provide either a one foot-reserve strip deeded to the City, or an alternative method for limiting access approved by the City, at the temporary end of the right-of-way.

3. Continuity of Public Bikeway and Pedestrian Facilities Located Off-Street

   Public bikeway and pedestrian facilities, other than those incorporated in a street right-of-way, shall either:

   a. Provide for a continuous system, with each segment originating and terminating with a connection to a public street, or to a designated activity center; or

   b. Provide stubbed facilities that may extend beyond the limits of an approved development, when such a public facility has been required by the decision-maker.

B. Block *Standards*

1. Block length shall not be less than 200 feet and not more than 600 feet, except where street location is precluded by any of the following;

   a. Natural topography, wetlands, significant habitat areas or bodies of water, or pre-existing development;

   b. Blocks adjacent to arterial streets, limited-access highways, collectors or railroads;

c. Residential blocks in which internal public circulation provides equivalent access.

2. In any block that is longer than 600 feet, as measured from the right-of-way line of the street to the right-of-way line of the adjacent street, a bikeway/ pedestrian facility shall be required through and near the middle of the block.

3. On any block longer than 1,200 feet, pathways may be required through the block at 600 foot intervals.

4. In a proposed development, or where redevelopment potential exists and a street connection is not proposed, one or more bikeway and pedestrian facilities may be required to connect a cul-de-sac to public streets, to other pathways, or to the project boundary to allow for future connections.

C. Street Access

Developments comprised of 25 or more dwelling units, including existing units, shall have at least two means of public street access from a cul-de-sac, dead-end street, or other street. Those two or more means of public access must be two non-overlapping public street routes to a major arterial identified in the TSP.

3.01.06 Street Names

A. All public streets and private manufactured dwelling park streets shall be named, after providing the Woodburn Fire District with an opportunity to review and comment.

B. Public and private manufactured dwelling park streets shall be named as follows:

1. The street name shall not duplicate an existing street name, unless there is reasonable assurance the named streets will be connected in the future.

2. New streets shall be designated with the same names as existing streets only if they fall in the same grid line and there are reasonable assurances that the street will connect with another section of the numbered street.

3. Street names shall not sound like another street name or cause confusion.

4. Street names that are deliberately misspelled, frivolous, or reflect the name of the developer or family members shall not be allowed.

C. Streets shall be further named with a suffix.

1. Except as indicated in the Woodburn Transportation System Plan, the following suffixes designations apply to new streets, as follows:

a. North/South streets shall be designated as a “Street”, with the exception that major streets classified as an arterial in the Woodburn TSP may be designated as a “Road” or a “Highway”.

b. East/West streets shall be designated as an “Avenue”, with the exception that major streets classified as an arterial in the Woodburn TSP may be designated as a “Road” or “Highway”.

c. A skewed or meandering street shall be named a “Drive”.

d. A street less than 1,000 feet in length may be designated as a “Place,” “Way,” or

"Lane".

e. A cul-de-sac street with no cross-street shall be designated as a "Court".

f. A continuous loop street that has two intersections with the same street shall be segmented, in reference to its orientation to the overall North/South, East/West street grid, so that the each segment of the loop has a unique name.

g. A street that runs in a circle with only one entrance/exit shall be designated as a "Circle".

h. A street with a continuously landscaped median shall be designated as a "Boulevard".

3.02 Utilities and Easements

The purpose of this Section is to ensure that adequate easements for public utilities and drainage are provided for all developments, to establish standards for street lighting, and to require that new developments be served with underground utilities.

3.02.01 Public Utility Easements
3.02.02 Creeks and Watercourse Maintenance Easements
3.02.03 Street Lighting
3.02.04 Underground Utilities

3.02.01 Public Utility Easements

A. The Director shall require dedication of specific easements for the construction and maintenance of municipal water, sewerage and storm drainage facilities located on private property.

B. A five-foot wide public utility easement shall be dedicated along each lot line abutting a public street.

C. As a condition of approval for development, including property line adjustments, partitions, subdivisions, design reviews, or Planned Unit Developments (PUDs), the Director may require dedication of public utility easements.

3.102.02 Creeks and Watercourse Maintenance Easements

A. Public improvement and maintenance easements shall be dedicated along all creeks and other water courses. On streams and waterways where development is regulated, based on Federal Emergency Management Administration (FEMA) flood hazard delineation, the minimum width shall be adequate to accommodate the 100-year floodway.

B. On other open channel water courses, such easements shall, at a minimum, extend from the top of one bank to the top of the other bank. These easements shall include an additional 20 feet in width at the top of the bank along the entire length, on one side of the open channel.

C. On all piped systems, the easement shall be a minimum of sixteen feet in width. Wider easements may be required by the Director, when needed to accommodate the installation of, or access to, larger and/or deeper pipes.

3.02.03 Street Lighting

A. Public Streets

Public streets abutting a development shall be illuminated with street lights installed to the standards of the City and the electric utility.

B. Manufactured Dwelling Park Private Streets

The full length of private streets and walkways in manufactured dwelling parks shall be illuminated with lighting designed to average 0.25 horizontal foot-candles.

3.02.04 Underground Utilities

All permanent utility service to and within a development shall be underground, except where overhead high-voltage (35,000 volts or more) electric facilities exist.

3.03 Setbacks and Open Space

The purpose of this Section is to identify the requirements for setbacks, open space and vision clearance requirements. Setbacks and open space provide for adequate air movement, solar access, visibility, aesthetics, emergency access, fire separation, recreation, and vision clearance.

3.03.01	Setbacks
3.03.02	Special Setbacks
3.03.03	Projections into the Setback Abutting a Street
3.03.04	Projections into the Side Setback
3.03.05	Projections into the Rear Setback
3.03.06	Vision Clearance Area

3.03.01 Setbacks

A. Setbacks

1. No required setback provided for any building or structure shall be considered as providing a setback for any other building.
2. No required setback for any building or structure shall be considered as providing lot coverage for another building, except for a common area not required to be located within a lot, when owned by a homeowner's association in a Planned Unit Development (PUD).

B. Setbacks shall be open and unobstructed by buildings or structures from the ground to the sky, except as may otherwise be permitted in this Section and in Accessory Structures (Section 2.06).

C. No portion of a lot necessary to meet the standards for lot area, width, frontage, setbacks, lot coverage, open space, or other requirement of this Ordinance shall have more than one owner, except through a zoning adjustment, or variance.

3.03.02 Special Setbacks

A. Special Setbacks are necessary when the existing street right-of-way is less than the designated right-of-way in the Woodburn Transportation System Plan. Special Setbacks ensure that development will conform with setback and vision clearance requirements, after a full right-of-way has been acquired.

B. Special setback distances shall be measured at right angles to the center line of street rights-of-way.

C. Where dedicated rights-of-way are less than the Special Setback, the setback abutting a street shall be measured from the Special Setback. All regulations applicable to setbacks abutting streets and vision clearance areas shall apply to the area between the lot line and the Special Setback.

Special Setback by Street Classification Table 3.1.1	
Transportation System Plan Classification	Special Setback from Centerline
Major Arterial	50 feet
Minor Arterial	37 feet
Service Collector	36 feet
Access Street/Commercial Street	33 feet
Local Street, 60-foot right-of-way	30 feet
Local Street, 52-foot right-of-way	26 feet
Local Street, 50-foot right-of-way	25 feet

3.03.03 Projections into the Setback Abutting a Street

A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may not project more than 24 inches into the setback abutting a street.

B. Covered, unenclosed porches, extending not more than 10 feet beyond the front walls of the building, shall maintain at least a 10 foot setback from the property line or Special Setback.

C. A balcony, outside stairway or other unenclosed, unroofed projection may not project more than 10 feet into a front setback.

D. Arbors, archways, pergolas and trellises shall be exempt from the setback abutting a street.

E. Uncovered decks, not more than 18 inches above final grade, shall maintain at least a three foot setback from the property line or Special Setback.

F. Flag poles shall maintain at least a five foot setback from the property line or Special Setback.

3.03.04 Projections into the Side Setback

A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may not project more than 18 inches into a side setback.

B. Fire escapes, when not prohibited by any other code or ordinance, may not project into a side setback farther than one-third of the width of the setback, or less than three feet.

C. Uncovered decks, not more than 18 inches above final grade, shall maintain at least a three foot setback from the property line or Special Setback.

3.03.05 Projections into the Rear Setback

A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may project not more than 24 inches into the rear setback.

B. A balcony, outside stairway or other unenclosed, unroofed projection may not project more than 10 feet into a rear setback. In no case shall such a projection come closer than 6 feet from any lot line or Special Setback.

C. Covered, unenclosed porches, extending not more than 10 feet beyond the rear walls of the building, shall maintain at least a 10 foot setback from the property line or Special Setback.

D. Uncovered decks not more than 18 inches above final grade shall maintain at least a three foot setback from the property line or Special Setback.

E. No permitted projection into a rear setback shall extend within ten feet of the centerline of an alley, or of a rear lot line if no alley exists, or within six feet of an accessory structure.

F. Accessory structures are not considered projections into a rear setback, but have separate setback requirements listed in this Ordinance (Section 2.06).

3.03.06 Vision Clearance Area

A. A vision clearance area (Figures 3.03A and B) is an area at the intersection of two streets, a street and a driveway, or a street and an alley, in which visual obstructions are limited for safety purposes.

B. The vision clearance area is formed by a combination of the following lines:

1. At the intersection of two public streets: a line extending 30 feet from the two lot lines adjacent to a street, and a third line drawn across the corner of the lot that connects the ends of the lines.

2. At the intersection of a public street and a private street: a line extending 30 feet from the lot line adjacent to the public street, a line extending 30 feet from the outside edge of the pavement on private street, and a third line drawn across the corner of the lot that connects the ends of the lines.

3. Within the DDC zone (Figure 3.03B): a line extending 20 feet from the two curb lines, and a third line drawn across the corner of the lot that connects the ends of the lines.

4. At the intersection of a public street and an alley: a line extending ten feet from the intersection along the back of curb, a line extending ten feet from the property line along the alley and a line drawn across the corner of the lot that connects the ends of the lines.

5. At the intersection of a public street and a driveway: a line extending ten feet from the intersection along the back of curb, a line extending ten feet along the side of the driveway, and a third line drawn across the corner of the lot that connects the ends of the lines.

6. At the intersection of a private street and a driveway: a line extending ten feet from the outside edge of pavement on the private street, a line extending ten feet along the side of the driveway, and a third line drawn across the corner of the lot that connects the

ends of the lines.

7. If a street is subject to a Special Setback, the Special Setback shall be used to define the vision clearance area.

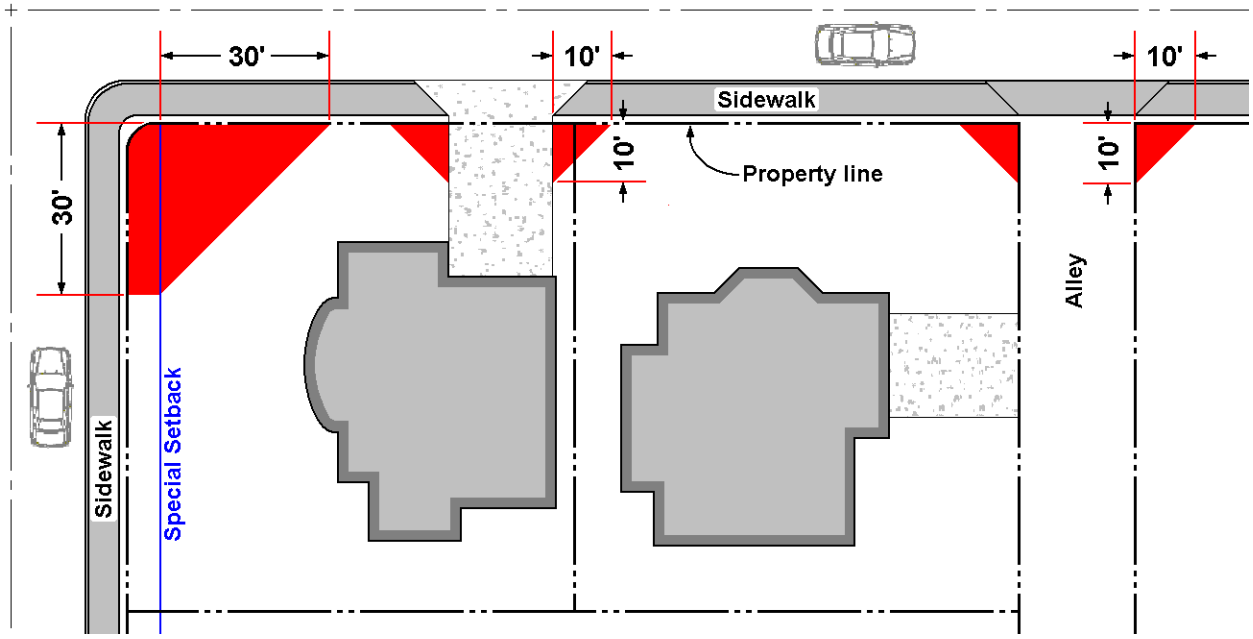


Figure 3.03A – Vision Clearance Area in All Zones Except DDC

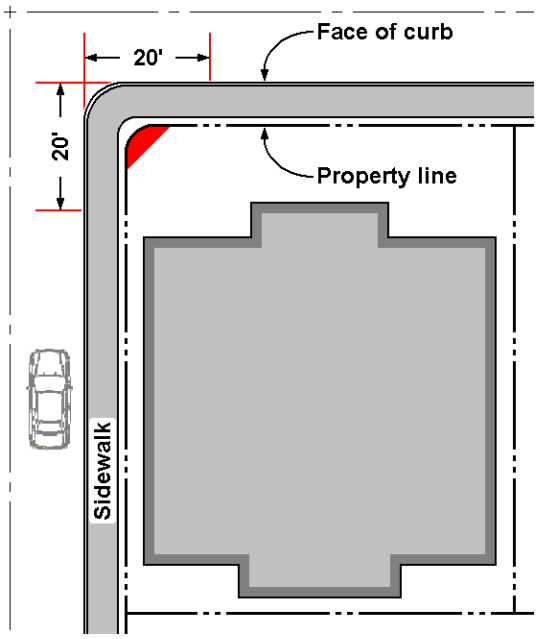


Figure 3.03B – Vision Clearance Area in the DDC Zone

C. Vision clearance area shall contain no plants, fences, walls, structures, signs, parking spaces, loading spaces, temporary or permanent obstructions exceeding 42 inches in height (measured from the top of the curb or, where no curb exists, from the street centerline),

except:

1. Trees, provided branches and foliage are removed to a height of 7 feet above grade;
2. Utility poles;
3. Utility boxes less than ten inches at the widest dimension; and
4. Traffic control signs and devices.

D. The Director shall have the authority to modify the standards for vision clearance areas upon finding that the modification is appropriate, due to one-way traffic patterns.

3.04 Vehicular Access

The purpose of this Section is to establish procedures and standards for granting vehicular access to public streets. Pedestrian access to public streets and between buildings is required and specified by the Woodburn Development Code (WDO).

3.04.01 Applicability and Permit
3.04.02 Drive-Throughs
3.04.03 Driveway Guidelines and Standards
3.04.04 Improvement Standards
3.04.05 Traffic Impact Analysis

3.04.01 Applicability and Permit

A. Street Access

Every lot shall have:

1. Direct access to an abutting public street, or
2. Access to a public street by means of an access easement and maintenance agreement to the satisfaction of the Director, and revocable only with the concurrence of the Director.

B. Access to City Streets

A City access permit shall be required for any new or modified vehicular access to a street that is under City jurisdiction.

C. Access to County Roads

Access to a road under the jurisdiction of Marion County shall be subject to County requirements. The Director may incorporate County requirements into the conditions of approval for any application.

D. Access to State Highways

Access to a transportation facility under the jurisdiction of the Oregon Department of Transportation (ODOT) shall be subject to State requirements. The Director may incorporate ODOT requirements into the conditions of approval for any application.

3.04.02 Drive-Throughs

A. Drive-Through Lane Dimensions and Configuration

1. Minimum Lane Width: 12 feet
2. Minimum Lane Length: 50 feet, unobstructed by lateral vehicular access. Precluded lateral vehicular access shall include the access/maneuvering area for off-street parking and overlap onto public street right-of-way. The unobstructed length shall be measured from the drive-up window or stop line, whichever is greater.

3. Minimum Turn Radius: 25 feet

B. By-Pass Lane

Drive-throughs shall include a by-pass lane to a site exit with a minimum width of 8 feet.

3.04.03 Driveway Guidelines and Standards

A. Number of Driveways

1. For residential uses, the maximum number of driveways per lot frontage shall be one. For purposes of controlling driveway access, every 100 feet of frontage is considered a separate lot frontage.
2. A minimum of two driveways shall be provided in developments with:
   a. 30 dwelling units in single-family or duplex dwellings; or
   b. 100 dwelling units in multiple-family dwellings (200 if all dwelling units are equipped with automatic fire sprinklers); or
   c. 100 living units in group care facilities or nursing homes (200 if all living units are equipped with automatic fire sprinklers).
3. For nonresidential uses, the number of driveways should be minimized based on overall site design, including consideration of:
   a. The function classification of abutting streets;
   b. The on-site access pattern, including parking and circulation, joint access, turnarounds and building orientation;
   c. The access needs of the use in terms of volume, intensity and duration characteristics of trip generation.
4. Unused driveways shall be closed.

B. Joint Access

1. Lots that access a Major Arterial, Minor Arterial, or Service Collector should be accessed via a shared driveway.
2. A partition, subdivision, or PUD should be configured so that lots abutting a Major Arterial, Minor Arterial, or Service Collector have access to a local street. Access to lots with multiple street frontages should be from the street with the lowest functional classification.
3. Every joint driveway or access between separate lots shall be established by an access easement and maintenance agreement to the satisfaction of the Director and revocable only with the concurrence of the Director.

C. Interconnected Parking Facilities

1. All uses on a lot shall have common or interconnected off-street parking and circulation facilities.

2. Similar or compatible uses on abutting lots shall have interconnected access and parking facilities.

Access Requirements Table 3.04A				
		1 to 4 Dwellings, Living Units or Individual Lots [6]	5 or More Dwelling or Living Units, School, or House of Worship	Commercial or Industrial Use
Flag Lot Access Width (feet) (See Figure 3.04A)		20 minimum	24 minimum	30 minimum
Paved Width of Driveway (feet) [3, 4]	1-way	n/a	12 minimum 20 maximum	12 minimum 20 maximum
	2-way	20 minimum 30 maximum	24 minimum 30 maximum (Add 8' if a turn lane is provided)	24 minimum 36 maximum (Add 8' if a turn lane is provided)
	Manufactured Dwelling Park	10 minimum	n/a	n/a
Curb Flare Radius (feet)		15 minimum	25 minimum	30 minimum
Throat Length (feet) [5]	Major Arterial, Minor Arterial, Service Collector	n/a	50 minimum	50 minimum
	Access or Local Street	n/a	20 minimum	20 minimum
Corner Clearance Guidelines [1] (See Figure 3.04B)	Access or Local Street	30 minimum	30 minimum	30 minimum
	Service Collector	50 minimum	50 minimum	50 minimum
	Minor Arterial	245 minimum	245 minimum	245 minimum
	Major Arterial	300 minimum	300 minimum	300 minimum
Driveway Separation Guidelines (feet) [1, 2] (See Figure 3.04B)	Driveway on the same parcel	22 minimum	50 minimum	50 minimum
	Access or Local Street	none	none	none
	Service Collector	50 minimum	50 minimum	50 minimum
	Minor Arterial	245 minimum	245 minimum	245 minimum
	Major arterial	300 minimum	300 minimum	300 minimum

Access Requirements Table 3.04A				
		1 to 4 Dwellings, Living Units or Individual Lots [6]	5 or More Dwelling or Living Units, School, or House of Worship	Commercial or Industrial Use
Turnarounds (See Figure 3.04C)	Access to a Major or Minor Arterial	Required	Required	Required
	Access to any other street	Required if the driveway length to the lot located furthest from the street exceeds 150 feet	Requirements per the Woodburn Fire District	Requirements per the Woodburn Fire District

1. The separation should be maximized.
2. Driveways on abutting lots need not be separated from each other, and may be combined into a single shared driveway.
3. Driveways over 40 feet long and serving one dwelling unit may have a paved surface 12 feet wide.
4. Notwithstanding the widths listed in this table, the minimum clearance around a fire hydrant shall be provided (See Figure 3.04D).
5. Throat length is measured from the closest off-street parking or loading space to the right-of-way. A throat applies only at entrances (See Figure 3.05B).
6. Maximum of 4 individual lots can be served from single shared driveway (See Figure 3.01D).

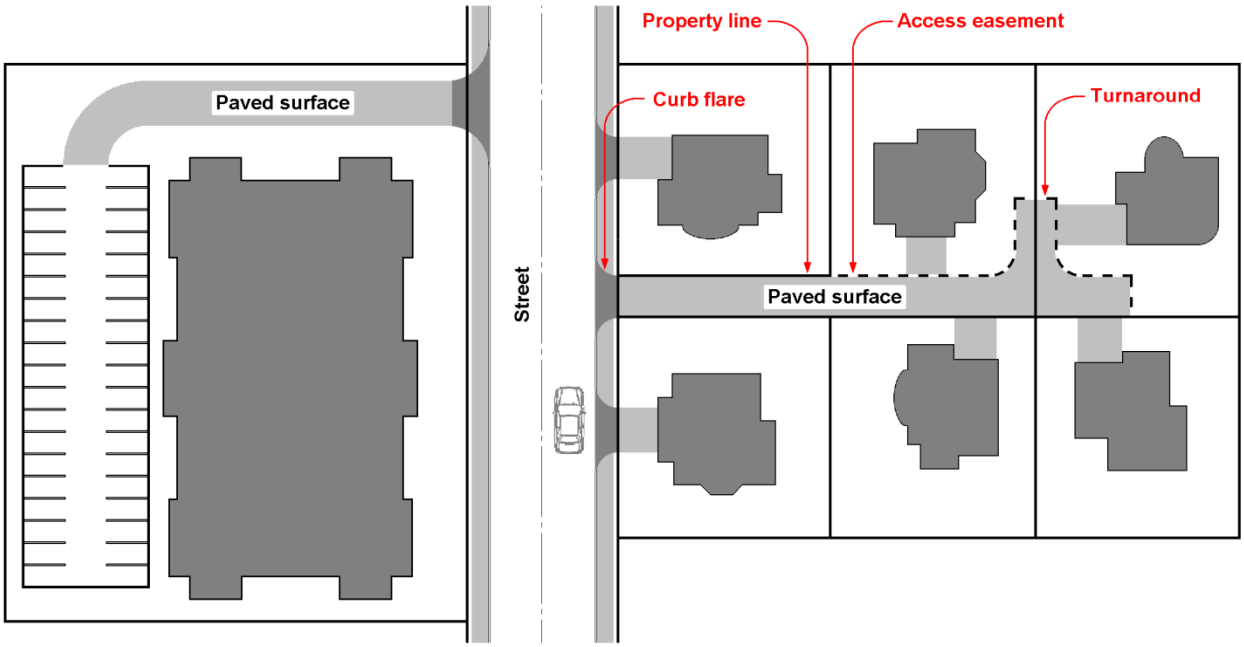


Figure 3.04A – Flag Lot Access Width

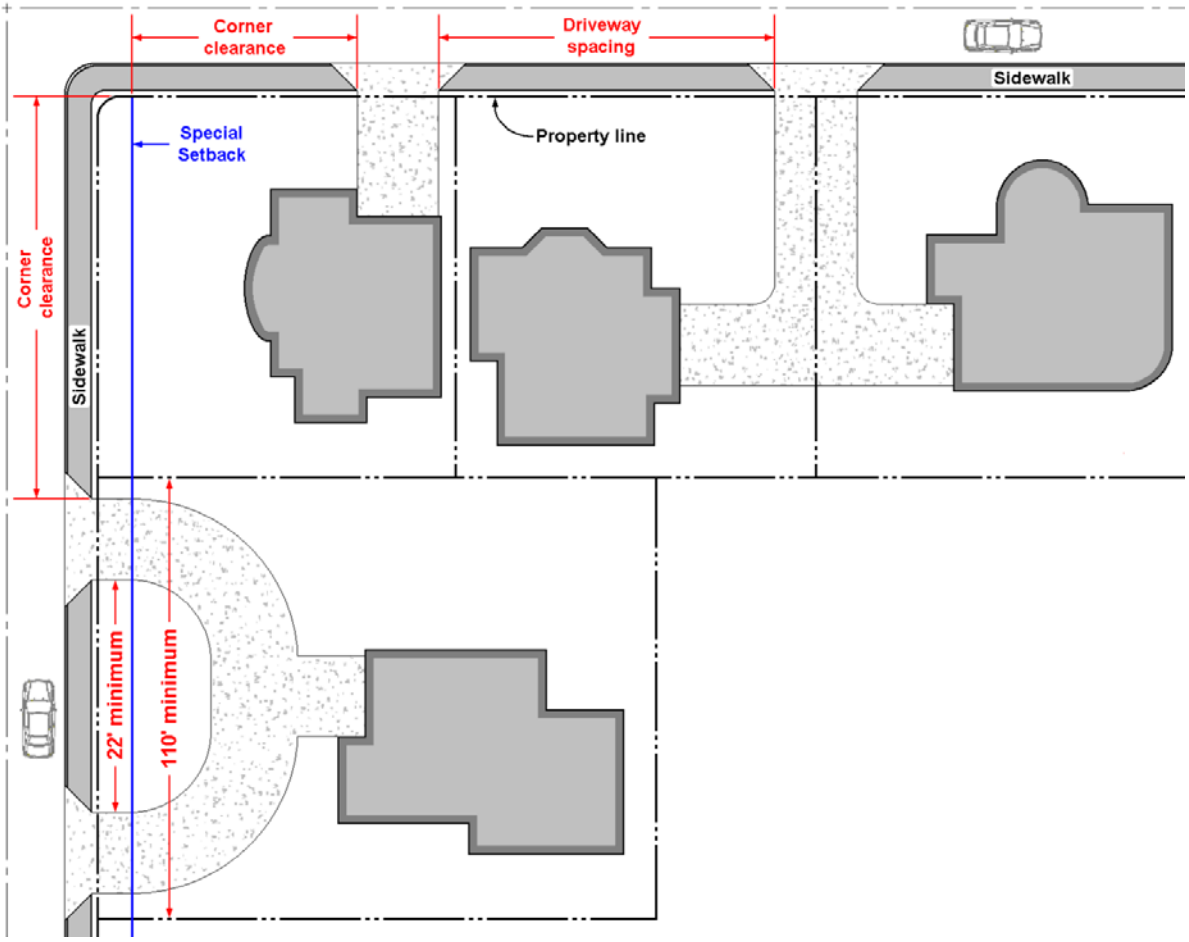


Figure 3.04B – Corner Clearance and Driveway Spacing

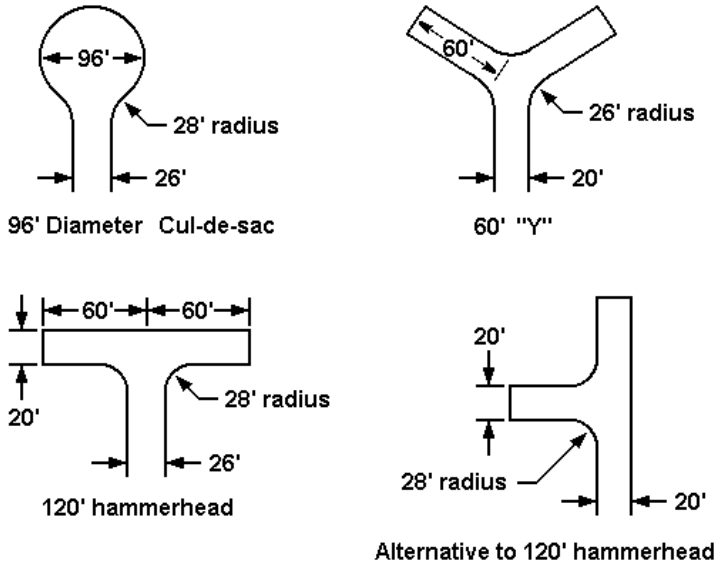


Figure 3.04C – Acceptable Turnarounds (from Oregon Fire Code Figure D103.1)

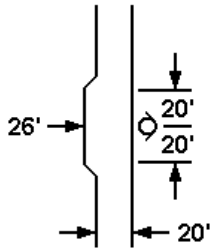


Figure 3.04D – Minimum Fire Hydrant Clearance (from Oregon Fire Code Figure D103.1)

3.04.04 Improvement Standards

The portion of a driveway on private property shall be paved with:

A. Portland cement concrete to a minimum depth of six inches, or

B. Asphalt concrete to a minimum depth of two inches, or

C. Brick or pavers with a minimum depth of two and one-fourth inches.

3.04.05 Traffic Impact Analysis

A. A Traffic Impact Analysis (TIA) may be required by the Director prior to the approval of a City access permit when the Director estimates a development proposal may generate either 100 or more additional, peak hour trips, or 1,000 or more additional daily trips, within ten years of a development application.

B. A TIA shall evaluate the traffic impacts projected of a development proposal and the estimated effectiveness of potential traffic impact mitigation measures.

C. The methodology for a TIA shall be consistent with City standards.

3.05 Off-Street Parking and Loading

The purpose of this Section is to identify the requirements for off-street parking and loading facilities. Well-designed parking facilities improve vehicular and pedestrian safety, promote economic activity, and enhance the driving public's experience. With appropriate landscaping and storm water design, parking areas can also mitigate the environmental impacts of development.

3.05.01	Applicability
3.05.02	General Provisions
3.05.03	Off-Street Parking
3.05.04	Off-Street Loading
3.05.05	Shared Parking

3.05.01 Applicability

The provisions of this Section shall apply to the following types of development:

A. All requirements and standards of Section 3.05 shall apply to any new building or structure constructed after the effective date of the Woodburn Development Ordinance (WDO).

B. Any additional parking or loading required to accommodate a change in use, or expansion of an existing use, shall conform to all parking, loading and landscaping standards of the WDO.

3.05.02 General Provisions

A. All required parking and loading spaces shall be retained and maintained in accordance with the standards of the WDO.

B. The land for off-street parking and loading areas shall either be:

   1. Owned in fee title by the owner of the structure or site being served by the parking area, or

   2. Subject to legal documentation to the satisfaction of the Director, establishing permanent use of off-street parking that is under separate ownership. The parking, subject to such a parking agreement, shall be in compliance with all requirements and development standards of the WDO. The agreement shall be recorded with the County Recorder and filed with the Director.

C. When calculations for determining the number of required off-street parking spaces results in a fractional space, any fraction of a space less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

D. Location

   1. Off-street parking and loading spaces shall be provided on the same lot as the primary

building or use except that:

a. In RS, R1S or RM zones, parking spaces for non-residential uses permitted in the zone may be located on another site, if such site is within 250 feet of the lot containing the primary building, structure or use.

b. In any zone other than RS, R1S or RM, the parking spaces may be located on another site, if such site is within 500 feet of the site containing the primary building, structure or use.

2. Off-street parking shall be located either in the same zone, in a more intensive zone or in a zone where parking is allowed as a permitted use, or subject to approval as a conditional use.

3. In residential districts, off-street parking and storage shall be prohibited within a yard abutting a street, except within a driveway leading to a garage or carport.

4. In non-residential districts, off-street parking and storage shall be prohibited within a setback adjacent to a street, except behind a wall. Vehicle parking within the public right-of-way shall not be eligible for fulfilling any required off-street parking requirement.

E. Setback

1. In commercial and industrial zones, the parking, loading, and circulation areas shall be set back from a street a minimum of five feet.

2. Parking, loading, and circulation areas shall be set back from a property line a minimum of five feet, unless there is a shared use agreement to the satisfaction of the Director, verifying shared use between the separate properties.

F. All vehicle parking and loading areas shall be paved to the standards of this ordinance (Section 3.04.04), except that in the IP, IL, SWIR, and P/SP zones, storage areas used for equipment that may damage pavement may be stored on a gravel-surface storage area. A gravel storage area shall be constructed to a minimum of surfacing of: six inches of one inch minus to three inch minus gravel. If three inch minus is used, the top two inches shall be one inch minus. The property owner shall maintain a gravel storage area to ensure continued drainage and dust control. A paved access apron to any paved access road is required, regardless of the storage area surface.

G. All vehicle parking, loading, and storage areas shall be graded and provide storm drainage facilities approved by the Director.

H. All parking spaces, except those for single-family and duplex dwellings, shall be constructed with bumper guards or wheel barriers that prevent vehicles from damaging structures, projecting over walkways so as to leave less than four feet of unobstructed passage, or projecting over access ways, abutting properties or rights-of-way.

I. Maneuvering areas shall be designed in compliance with this Section (Table 3.05C). Off-street parking areas shall be designed so that no backing or maneuvering within a public right-of-way is required. These provisions do not apply to single-family dwellings or duplexes.

J. All uses required to provide 20 or more off-street parking spaces shall have directional markings or signs to control vehicle movement.

K. Except for single-family and duplex dwellings, off-street parking spaces shall be delineated by double parallel lines on each side of a space. The total width of the lines shall delineate a separation of two feet. The lines shall be four inches wide (See Figure 3.05C).

L. For nonresidential uses:

1. Parking and loading areas should be illuminated at an average of 0.2 horizontal foot-candle at ground level (or 0.5 horizontal foot-candle if the applicant states that personal security or vandalism is a likely or severe problem), with a maximum uniformity ratio of 20:1 (maximum to minimum)

2. Entrance areas to the building should be illuminated at an average of 0.5 horizontal foot-candle at ground level (or 1.0 horizontal foot-candle if the applicant states that personal security or vandalism is a likely or severe problem), with a maximum uniformity ratio of 15:1 (maximum to minimum).

3. Illumination shall not shine or reflect onto residentially zoned property or a public street.

M. Required parking spaces shall be available for parking of operable vehicles of residents, customers, patrons and employees and shall not be used for the storage of vehicles or materials or for the parking of fleet vehicles, except for those fleet vehicles:

1. Driven by an employee to the site each work day from home, or

2. Stored during periods other than normal business hours.

3.05.03 Off-Street Parking

A. Number of Required Off-Street Parking Spaces

1. Off-street vehicle parking spaces shall be provided in amounts not less than those set forth in this Section (Table 3.05A).

2. Off-street vehicle parking spaces shall not exceed two times the amount required in this Section (Table 3.05A).

B. Accessible parking shall be provided in amounts not less than those set forth in Table 3.05B. The number of accessible spaces shall be included as part of total required vehicle parking spaces.

C. A maximum of 20 percent of the required vehicle parking spaces may be satisfied by compact vehicle parking spaces.

D. Off-street vehicle parking spaces and drive aisles shall not be smaller than specified in this Section (Table 3.05C).

E. All uses that are required to provide 10 or more off-street parking spaces and residential structures with four or more dwelling or living units shall provide a bicycle rack within 50 feet of the main building entrance. The number of required rack spaces shall be one space per ten vehicle parking spaces, with a maximum of 20 rack spaces.

F. Garages

1. For single-family and duplex dwellings,

   a. The parking spaces required by this section (Table 3.105A) shall be in a garage or garages.

   b. There shall also be an improved parking pad, abutting the garage doorway, for each opposing parking space within the garage. Each parking pad shall have the minimum dimensions of 10 feet wide by 20 feet long.

2. For multi-family dwellings, one-half of the parking spaces required by this Section (Table 3.05A) shall be in a garage or garages.

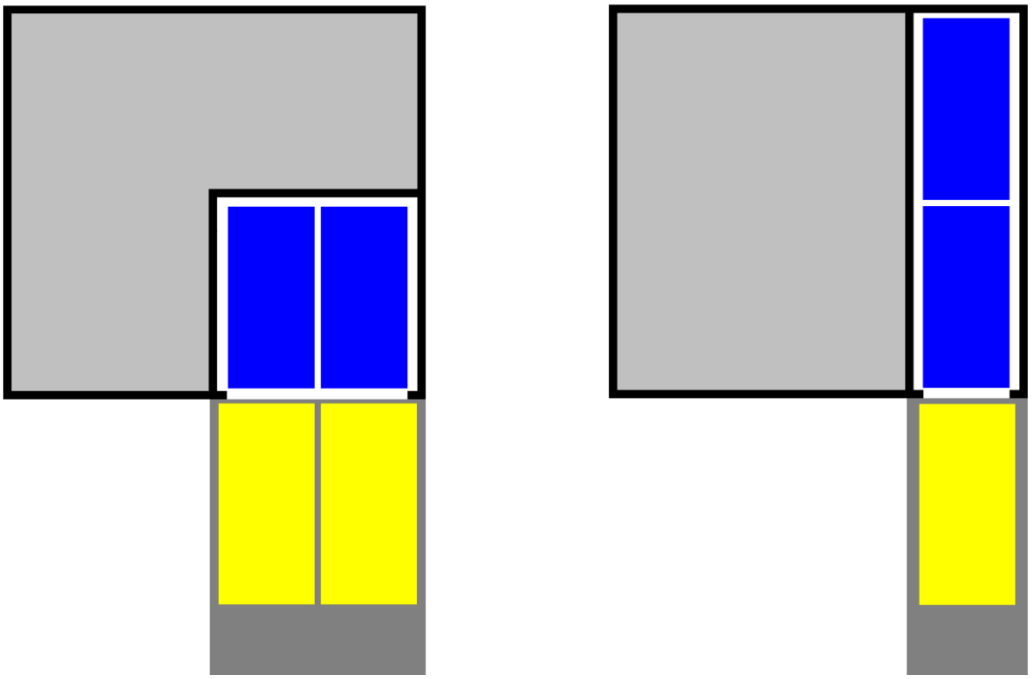


Figure 3.05A – Parking Spaces in Garage (Blue) and Improved Parking Pad (Yellow)

G. Additional design standards apply in the DDC zone (Section 3.07.07.C.12), MUV zone (Section 3.07.08.K), and NNC zone (Section 3.07.09.B).

Off-Street Parking Ratio Standards Table 3.05A	
Use [1, 2]	Parking Ratio - spaces per activity unit or square feet of gross floor area
RESIDENTIAL	
1. Dwellings, including manufactured homes	2/ dwelling unit
2. Rooming/boarding house, hotel, motel, and other traveler accommodations	2 parking spaces + 1/ guest room
3. Group Home or Group Care Facility	0.75/ living unit

Off-Street Parking Ratio Standards Table 3.05A	
Use [1, 2]	Parking Ratio - spaces per activity unit or square feet of gross floor area
COMMERCIAL / PUBLIC	
4. General indoor recreation	1/ 200 square feet
5. Food and drinking places	1/ 200 square feet
6. Motor vehicle service	1/ 200 retail area + 3/ service bay + 1/ pump island
7. General retail sales (such as food and beverages, clothing, sporting goods, health and personal care items, and motor vehicle parts) 8. Photo finishing 9. Ambulatory health services (such as doctors, dentists, optometrists, and chiropractors) 10. Postal service 11. Limited-service eating place	1/ 250 square feet
12. Offices (such as professional, scientific and technical services, finance and insurance, real estate, administrative and support services, social assistance, and public administration – but not including ambulatory health services)	1/ 350 square feet
13. Personal services	Greater of: 1/ 350 square feet; or 2/ service chair or room
14. Libraries	1/ 400 square feet
15. Outdoor sales and service of bulky merchandise (such as motor vehicles, farm equipment, and manufactured dwellings)	1/ 400 square feet of structure + 1/ 20,000 square feet of outdoor display area
16. General repair and service (such as electronic and precision equipment, leather goods, laundry and dry cleaning equipment)	1/ 500 square feet
17. Printing and related support activities 18. Mail order house	Greater of 1/ 700 square feet or 1/ employee
19. Fabricated metal products manufacturing 20. Commercial and industrial equipment repair 21. Craft industries 22. Commercial bakery	Greater of 1/ 800 square feet or 1/ employee
23. Indoor sales and service of bulky merchandise (such as furniture, appliances, and building materials)	1/ 900 square feet

Off-Street Parking Ratio Standards Table 3.05A	
Use [1, 2]	Parking Ratio - spaces per activity unit or square feet of gross floor area
24. Temporary outdoor marketing and special events	1/ 1,000 square feet of outside event space plus, no reduction from primary zoning for other uses.
25. Delivery services	One space per delivery vehicle plus one space per employee per shift.
26. Mobile Food Service	4
27. Home occupation 28. Residential sales office 29. Temporary residential sales	No reduction from dwelling requirement is allowed.
30. Contractors	2 parking spaces + 1/ employee
31. Parks and playgrounds	Minimum of other uses requiring parking
32. Urban transit system, interurban and rural transit, taxi service, limousine service, school transportation, charter bus service, special needs transportation, motor vehicle towing	1/ vehicle plus 1/ employee
33. Hospital	1.5/ bed
34. Meeting facilities (such as house of worship, auditorium, motion picture theater, arena, funeral home, and lodge hall) 35. Museum and historic sites 36. Community center 37. Community club building and facilities	One space per 4 occupants, as established by the building code
38. Bowling center	2/ lane
39. Golf course	4/ tee
40. Court games (tennis, handball, racquetball)	3/ court + 1/ 4 feet of bench
41. Day care	2/ caregiver
42. Elementary or middle school	2/ classroom
43. High school	1/ unit of capacity for 6 students
44. Community college, college, business school, trade school, technical school, other instruction (including dance, driving and language)	1/ unit of capacity for 4 students
45. Play or ball field	Greater of: 15/ field or 1/ 8 feet of bench
46. Government and public utility buildings and structures	Greater of: 2 or one per employee at location
47. Cemetery	10 plus one per acre

INDUSTRIAL	
48. Wholesale trade 49. Motor vehicle wrecking yard	1/ 700 retail square feet + 1/ 1,000 wholesale square feet
50. Manufacturing 51. Stone, clay, glass and concrete products 52. Fabricated metal products, except machinery 53. Electronic and other electrical equipment and components, except computer equipment 54. Transportation equipment	Greater of: a. 1/ 800 square feet (0 to 49,999 square feet) b. 63 plus 1/ 1,000 square feet over 50,000 (50,000 to 99,999 square feet) c. 113 plus 1/ 2,000 square feet over 100,000 (100,000 square feet or more) or 1/ employee
55. Warehousing 56. Motor freight transportation and warehousing 57. Truck transportation 58. Support activities for rail transportation 59. Wholesale trade – durable goods 60. Wholesale trade – Non-durable goods 61. Recycling centers 62. Asphalt or cement batch plants	Greater of: a. 1/ 5000 square feet (0 to 49,999 square feet) b. 10 plus 1/ 10,000 square feet over 50,000 (50,000 to 99,999 square feet) c. 15 plus 1/ 15,000 square feet over 100,000 (100,000 square feet or more) or 1/ employee
63. Agricultural practices 64. Telecommunication facilities	Exempt from the parking requirements
65. Transit ground transportation	1 transit vehicle space per transit vehicle plus 1/ employee
66. Freight transportation arrangement	1/ employee
67. Self storage	1/ 6 storage units, maximum of 6 spaces

1. The Director may authorize parking for any use not specifically listed in this table. The applicant shall submit an analysis that identifies the parking needs, and a description of how the proposed use is similar to other uses permitted in the zone. The Director may require additional information, as needed, to document the parking needs of the proposed use.
2. There is no required parking ratio for non-residential uses and residential units above first floor commercial uses in the DDC zone (See Section 3.07.07.C.12).

Accessible Parking Ratio Standards Table 3.05B			
Total Spaces [2,3]	Minimum Total Accessible Spaces [1]	Minimum Van Accessible Spaces	Minimum "Wheelchair User Only" Spaces
1 to 25	1	1	
26 to 50	2	1	
51 to 75	3	1	
76 to 100	4	1	
101 to 150	5		1
151 to 200	6		1
201 to 300	7		1
301 to 400	8		1
401 to 500	9		2
501 to 1000	2% of total		1 in every 8 accessible spaces or portion thereof
1001 or more	20 plus 1 for each 100 spaces over 1000		

1. "Van Accessible Spaces" and "Wheelchair User Only" are included in "Total Accessible Spaces."
2. Facilities providing outpatient services require ten percent of the total number of parking spaces to be accessible spaces.
3. Facilities that specialize in treatment or services for persons with mobility impairments require 20 percent of the total number of parking spaces to be accessible spaces.

Parking Space and Drive Aisle Dimensions Table 3.05C							
Parking Angle	Type of Space	Stall Width (feet)	Curb Length (feet)	Stripe Length (feet)	Stall to Curb (feet)	Drive Aisle Width (feet)	
						1-way	2-way
A		B	C	D	E	F	G
0° (Parallel)	Standard	9.0	22.5	8.0	8.0	12.0	24.0
	Compact	8.0	22.5	8.0	8.0		
	Accessible	9.0	22.5	9.0	9.0		
	Accessible Aisle	Part of the accessible route to a building					

Parking Space and Drive Aisle Dimensions
Table 3.05C

Parking Angle	Type of Space	Stall Width (feet)	Curb Length (feet)	Stripe Length (feet)	Stall to Curb (feet)	Drive Aisle Width (feet)	
						1-way	2-way
A		B	C	D	E	F	G
30°	Standard or Accessible	9.0	18.0	34.6	17.3	12.0	24.0
	Compact	7.5	15.0	28.0	14.0		
	Car Accessible Aisle	6.0	12.0	29.4	14.7		
	Van Accessible Aisle	8.0	16.0	32.9	16.5		
45°	Standard or Accessible	9.0	12.7	28	19.8	15.0	24.0
	Compact	7.5	10.6	22.5	15.9		
	Car Accessible Aisle	6.0	8.5	25.0	17.7		
	Van Accessible Aisle	8.0	11.3	27.0	19.1		
60°	Standard or Accessible	9.0	10.4	24.2	21.0	18.0	24.0
	Compact	7.5	8.7	19.3	16.7	15.0	
	Car Accessible Aisle	6.0	6.9	22.5	19.5		
	Van Accessible Aisle	8.0	9.2	23.3	20.4		
90°	Standard or Accessible	9.0	9.0	19.0	19.0	24.0	24.0
	Compact	7.5	7.5	15.0	15.0	22.0	
	Car Accessible Aisle	6.0	6.0	19.0	19.0	24.0	
	Van Accessible Aisle	8.0	8.0	19.0	19.0		

1. A parking space may occupy up to two feet of a landscaped area or walkway. At least four feet clear width of a walkway must be maintained.
2. Space width is measured from the midpoint of the double stripe.
3. Curb or wheel stops shall be utilized to prevent vehicles from encroaching on abutting properties or rights-of-way.
4. The access aisle must be located on the passenger side of the parking space, except that two adjacent parking spaces may share a common access aisle.
5. Where the angle of parking stalls differ across a drive aisle, the greater drive aisle width shall be provided.

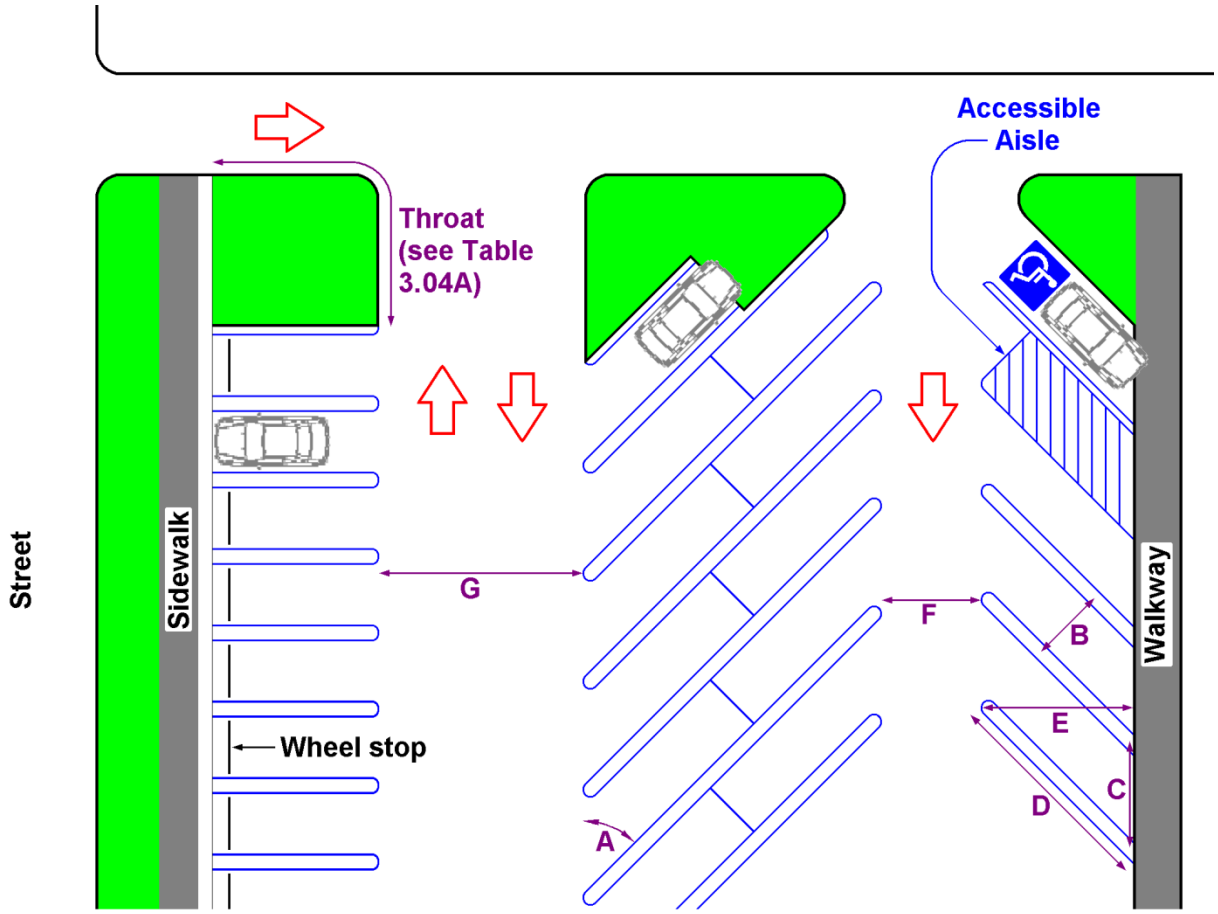


Figure 3.05B - Parking Space and Aisle Dimensions

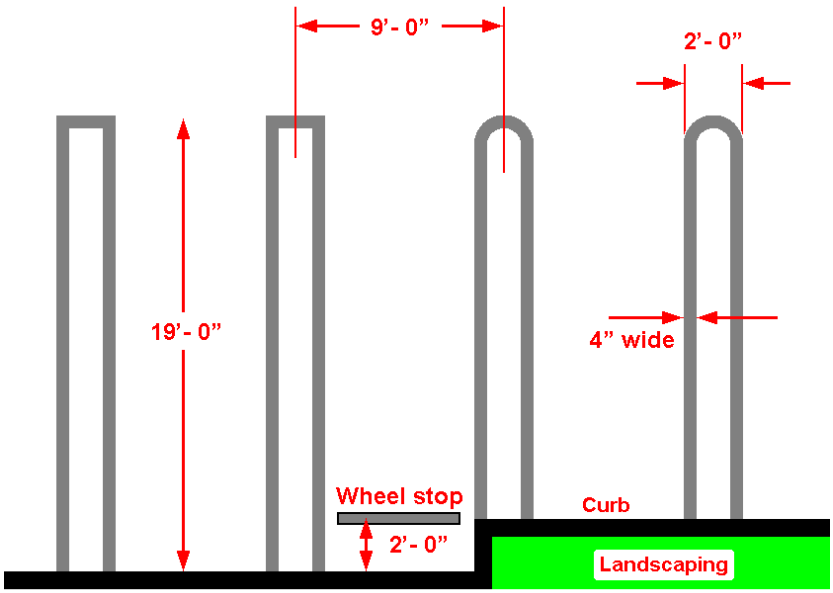


Figure 3.05C - Parking Space Striping

3.05.04 Off-Street Loading

A. Off-street loading spaces shall comply with the dimensional standards and amounts not less than those set forth in this Section (Table 3.05D).

B. The off-street loading facilities shall be on the same lot, or site, as the use or structure they are intended to serve. Required loading spaces and required parking spaces shall be separate and distinct, except that if authorized through a land use decision, a parking area may be used for loading during those times when the vehicle parking area is not in use.

C. Additional design standards apply in the industrial zones (Section 3.07.10.B.2).

Loading Space Requirements
Table 3.05D

Use and Area (square feet)	Minimum Number of Spaces	Minimum Size of Space (feet)		
		Width	Length	Height
Office 0 – 4,999 5,000 – 41,999 42,000 or more	 0 1 2	12	30	14
Nonresidential uses, except office, in the CO, CG, and NNC zones 0 – 9,999 10,000 – 41,999 42,000 – 81,999 82,000 or more	 1 2 3 4	12	30	14
All uses in the IP, IL, and SWIR zones 0-11,999 square feet 12,000 – 35,999 36,000 – 59,999 60,000 – 99,999 100,000 or more	 1 2 3 4 1 additional for each 50,000 square feet or fraction thereof	12	60	14

3.05.05 Shared Parking

A. Shared parking shall be allowed through a Zoning Adjustment, Design Review, Conditional Use, or Planned Unit Development.

1. Up to 20 percent of the required vehicle parking may be satisfied by joint use of the parking area for another use with the same peak hours; or
2. Up to 40 percent of the required vehicle parking may be satisfied by joint use of the parking area for another use with alternate peak hours; and
3. An additional amount of joint use parking, of up to 10 percent of the required vehicle parking, may be satisfied when the development is located along a transit service route

with stops, pullouts, or shelters.

Note: This provision does not reduce the number of required off-street parking spaces, but allows a portion of the requirement to be satisfied by shared parking. The actual number of required off-street parking spaces may be reduced through a Zoning Adjustment or Variance.

B. The following uses are considered as daytime uses for purposes of shared parking identified in this Section: banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing, shoe repair or service shops, manufacturing or wholesale buildings, and other similar primarily daytime uses, as determined through the Zoning Adjustment or Design Review.

C. The following uses are considered as nighttime or weekend uses for purposes of shared parking identified in this Section: auditoriums incidental to a public or private school, houses of worship, bowling alleys, dance halls, theaters, drinking and eating establishments, and other similar primarily nighttime or weekend uses, as determined through the Zoning Adjustment or Design Review.

D. Shared parking may be allowed if the following standards are met:

1. Future changes of use, such as expansion of a building or establishment of hours of operation which conflict with, or affect, a shared parking agreement, shall require review and authorization of a subsequent Design Review or Modification of Conditions.

2. Legal documentation, to the satisfaction of the Director, shall be submitted verifying shared parking between the separate developments. Shared parking agreements may include provisions covering maintenance, liability, hours of use, and cross-access easements.

3. The approved legal documentation shall be recorded by the applicant at the Marion County Recorder's Office and a copy of the recorded document shall be submitted to the Director, prior to issuance of a building or other land use permit.

3.06 Landscaping

The purpose of this Section is to identify the requirements for site landscaping and street trees. Landscaping enhances the beauty of the City, provides shade and temperature moderation, mitigates some forms of air and water pollution, reduces erosion, promotes stormwater infiltration, and reduces peak storm flows.

3.06.01	Applicability
3.06.02	General Requirements
3.06.03	Landscaping Standards
3.06.04	Plant Unit Value
3.06.05	Screening
3.06.06	Architectural Walls
3.06.07	Significant Trees on Private Property

3.06.01 Applicability

The provisions of this Section shall apply:

A. To the site area for all new or expanded non-residential development, parking and storage areas for equipment, materials and vehicles.

B. Single-family and duplex dwellings need comply only with the street tree and significant tree provisions of this Section.

3.06.02 General Requirements

A. Building plans for all uses subject to landscaping requirements shall be accompanied by landscaping and irrigation plans.

B. All required landscaped areas shall be irrigated unless it is documented that the proposed landscaping does not require irrigation.

C. All shrubs and ground cover shall be of a size upon installation so as to attain 80% of ground coverage within 3 years.

D. Installation of plant materials and irrigation specified in an approved landscaping plan shall occur at the time of development and shall be a condition of final occupancy. Should site conditions make installation impractical, an acceptable performance guarantee may be approved, subject the requirements of this Ordinance (Section 4.02.08).

E. The property owner shall be responsible for maintaining all landscaping, fences, and walls in good condition, so as to present a healthy and orderly appearance. Unhealthy and dead plants shall be removed and replaced, in conformance with the original landscape plan.

F. The required number of plant units shall be met by a combination of plant materials listed in this Ordinance (Table 3.06B).

G. Required plant units need not be allocated uniformly throughout specified landscaping areas, but may be grouped for visual effect.

H. Landscaped areas that are not covered by plant materials shall be covered by a layer of bark mulch or decorative rock, a minimum of two inches in depth.

I. A six inch high concrete curb shall be provided between landscaped areas and parking and circulation areas.

J. Plant materials shall be appropriate to the climate and environment of Woodburn. Inclusion of plants identified in "Suggested Plant Lists for Required Landscaping", published by the Portland Bureau of Development Services, can be used to meet this standard. A landscape architect, certified arborist or nursery person may also attest to plant appropriateness.

K. Prohibited trees identified by this ordinance (Table 3.06C) do not count towards required landscaping.

3.06.03 Landscaping Standards

A. Street Trees

Within the public street right-of-way abutting a development, street trees shall be planted to City standards, prior to final occupancy.

1. One tree per every entire 50 feet of street frontage shall be planted within the right-of-way, subject to vision clearance area standards and placement of public utilities.
2. Street trees shall be planted according to the property's zoning, and the abutting street's classification in the Transportation System Plan:
   a. Large trees shall be planted along Major and Minor Arterial streets. Large trees shall also be planted along all streets in the Neighborhood Conservation Overlay District (NCOD), regardless of street classification;
   b. Medium trees shall be planted along Service Collector and Access/Commercial Streets;
   c. Small trees shall be planted along all other streets.
3. The Director may modify this requirement, based on physical constraints and existing conditions, including the location of driveways and utilities. Such modification may include relocating the street trees to abutting private property.

B. Site landscaping shall comply with Table 3.06A.

Planting Requirements
Table 3.06A

Location	Planting Density, Minimum	Area to be Landscaped, Minimum
Setbacks abutting a street	1 PU/15 square feet	Entire setback excluding driveways
Buffer yards	1 PU/20 square feet	Entire yard excluding off-street parking and loading areas abutting a

Planting Requirements Table 3.06A		
Location	Planting Density, Minimum	Area to be Landscaped, Minimum
		wall
Other yards	1 PU/50 square feet	Entire yard, excluding areas subject to more intensive landscaping requirements and off-street parking and loading areas
Off-street parking and loading areas	• 1 small tree per 10 parking spaces; or [1] • 1 medium tree per 15 parking spaces; or [1] • 1 large tree per 25 parking spaces [1] and • 1 PU/20 square feet excluding required trees [2]	• RS, R1S, RSN, RM, RMN, P/SP, CO, CG and MUV zones: 20% of the paved surface area for off-street parking, loading and circulation • DDC, NNC, IP, IL, and SWIR zones: 10% of the paved surface area for off-street parking, loading and circulation • Landscaping shall be within or immediately adjacent to paved areas
Common areas, except those approved as natural common areas in a PUD	3 PU/50 square feet	Entire common area

1. Trees shall be located within off-street parking facilities, in proportion to the distribution of the parking spaces.
2. Required landscaping within a setback abutting a street or an interior lot line that is within 20 feet of parking, loading and circulation facilities may also be counted in calculating landscaping for off-street parking, loading and circulation areas.

3.06.04 **Plant Unit Value**

Plant Unit (PU) Value Table 3.06B		
Material	Plant Unit (PU) Value	Minimum Size
1. Significant tree [1]	15 PU each	24” Diameter
2. Large tree (60-120 feet high at maturity [1]	10 PU each	10’ Height or 2” Caliper
3. Medium tree (40-60 feet high at maturity [1]	8 PU each	10’ Height or 2” Caliper

Plant Unit (PU) Value Table 3.06B		
Material	Plant Unit (PU) Value	Minimum Size
4. Small tree (18-40 feet high at maturity) [1]	4 PU each	10’ Height or 2” Caliper
5. Large shrub (at maturity over 4’ wide x 4’ high) [1]	2 PU each	3 gallon or balled
6. Small to medium shrub (at maturity maximum 4’ wide x 4’ high) [1]	1 PU each	1 gallon
7. Lawn or other living ground cover [1]	1 PU / 50 square feet	
8. Berm [2]	1 PU / 20 lineal feet	Minimum 2 feet high
9. Ornamental fence [2]	1 PU / 20 lineal feet	2½ - 4 feet high
10. Boulder [2]	1 PU each	Minimum 2 feet high
11. Sundial, obelisk, gnomon, or gazing ball [2]	2 PU each	Minimum 3 feet high
12. Fountain [2]	3 PU each	Minimum 3 feet high
13. Bench or chair [2]	0.5 PU / lineal foot	
14. Raised planting bed constructed of brick, stone or similar material except CMU [2]	0.5 PU / lineal foot of greatest dimension	Minimum 1 foot high, minimum 1 foot wide in least interior dimension
15. Water feature incorporating stormwater detention [2]	2 per 50 square feet	None
1. Existing vegetation that is retained has the same plant unit value as planted vegetation. 2. No more than twenty percent (20%) of the required plant units may be satisfied by items in lines 8 through 15.		

Prohibited Trees Table 3.06C		
Common Name	Scientific Name	Negative Attributes
Almira Norway Maple	Acer platanoides “Almira”	Sidewalk damage
Box Elder	Acer negundo	Weak wood, sidewalk damage
Catalpas	Catalpa Species	Significant litter (hard fruit 12" or more as elongated pod)

Prohibited Trees Table 3.06C		
Common Name	Scientific Name	Negative Attributes
Desert, or Velvet, Ash	Fraxinus velutina	Susceptible to bores, crotch breakage, significant litter
Douglas Fir	Pseudotsuga menziesii	Not as street tree
Elms	Ulmus Species	Susceptible to Dutch Elm disease
European Ash	Fraxinus excelsior	Disease susceptible, significant litter
Fruit bearing trees		Not appropriate due to fruit
Ginko, or Maidenhair, Tree	Ginko biloba	Disgusting odor from squashed fruit when female near male
Green Ash	Fraxinus pennsylvanica	Susceptible to insects and disease, crotch breakage, significant litter
Hackberry or Sugarberry	Celtis Species	Significant litter (fleshy fruit)
Hickory, Pecan	Carya Species	Significant litter (hard fruit)
Holly	Ilex Species	Sight obstruction (evergreen, low foliage)
Horse Chestnut	Aesculus hippocastanum	Significant litter (inedible nut)
Lavalle Hawthorne	Crategus lavellei	Hazardous (thorns on trunk and branches)
Lilac	Syringa Species	Sight obstruction (low foliage), pollen allergies
Oak	Quercus Species	Significant litter (hard fruit)
Pines	Pinus Species	Sight obstruction (evergreen, low foliage)
Poplar, Cottonwood	Poplus Species	Brittle, significant litter
Profusion Crab Apple	Malus “Sargent”	Significant litter (fleshy fruit)
Silver Maple	Acer saccaharinum	Sidewalk damage, root invasion into pipes
Spruces	Picea Species	Sight obstruction (evergreen, low foliage)
Sweetgum	Liquidambar styruciflua	Significant litter (hard fruit)
Thundercloud Plum	Prunus “Thundercloud”	Significant litter (fleshy fruit)
Tree of Heaven	Ailanthus altissima	Sidewalk damage
Walnuts	Juglans Species	Significant litter (hard fruit)
Willow	Salix Species	Root invasion into pipes
Winter Crab Apple	Malus “Winter Gold”	Significant litter (fleshy fruit)

3.06.05 **Screening**

A. Screening between zones and uses shall comply with Table 3.06D.

Screening Requirements
Table 3.06D

N = No screening required F = Sight-obscuring fence required W = Architectural wall required
D = Architectural wall, fence, or hedge may be required in the Design Review process

Adjacent properties – zone or use that receives the benefit of screening → / **Property being Developed** – must provide screening if no comparable screening exists on abutting protected property ↓	RS, R1S, or RSN zone	RM or RMN zone	DDC or NNC zone	CO zone	CG or MUV zone	IP, IL, or SWIR zone	P/SP zone	Single-family dwelling, duplex, child care facility, or group home [7]	Multiple-family dwelling, child care facility, group home or nursing home [5, 8]	Nonresidential use in a residential zone	Manufactured dwelling park
RS, R1S, or RSN zone	N	N	N	N	N	N	N	N	N	N	N
RM or RMN zone	W[2]	D	W[2]	D	W[2]	W[2]	D	W[2]	D	N	W[2]
DDC or NNC zone	N	N	N	N	N	N	N	N	N	N	N
Nonresidential use in CO zone	W[2]	W[2]	W[2]	N	W[2]	W[2]	N	W[2]	D	N	W[2]
CG or MUV zone	W[2]	W[2]	D	D	D	D	D	W[2]	W[2]	D	W[2]
Outdoor storage in CG or MUV zone	W[1, 3]	W[1, 3]	W[1,3]	W[1, 3]	W[1, 3]	W[1, 3]	W[1, 3]	W[1,3]	W[1,3]	W[1,3]	W[1,3]
IP, IL, or SWIR zone	W[3]	W[3]	D	W[3]	D	D	D	W[3]	W[3]	W[3]	W[3]
P/SP zone – Permitted use	D	D	N	N	N	N	N	D	D	N	D
P/SP zone – Conditional use	D	D	D	D	D	D	D	D	D	D	D
Single-family dwelling, duplex, child care facility, or group home	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]	N[7]
Multiple-family dwelling, child care facility, group home or nursing home	W[2, 5, 8]	D	W[2,5, 8]	D	W[2, 5, 8]	W[2, 5, 8]	W[2, 5, 8]	W[2,5, 8]	D	D	W[2,5, 8]
Nonresidential use in a residential zone	W[2]	W[2]	D	D	D	D	D	W[2]	W[2]	D	W[2]
Manufactured dwelling park	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	D
Boat, recreational, and vehicle storage pad, if within 10 feet of a property line	F[2]	F[2]	F[2]	F[2]	F[2]	N	F[2]	F[2]	F[2]	F[2]	F[2]
Common boat, recreational, and vehicle storage area	W[2, 4]	W[2, 4]	W[2,4]	W[2, 4]	W[2, 4]	D	W[2, 4]	W[2,4]	W[2,4]	W[2,4]	W[2,4]

Screening Requirements
Table 3.06D

N = No screening required F = Sight-obscuring fence required W = Architectural wall required
D = Architectural wall, fence, or hedge may be required in the Design Review process

Adjacent properties – zone or use that receives the benefit of screening → / **Property being Developed** – must provide screening if no comparable screening exists on abutting protected property ↓	RS, R1S, or RSN zone	RM or RMN zone	DDC or NNC zone	CO zone	CG or MUV zone	IP, IL, or SWIR zone	P/SP zone	Single-family dwelling, duplex, child care facility, or group home[7]	Multiple-family dwelling, child care facility, group home or nursing home[5, 8]	Nonresidential use in a residential zone	Manufactured dwelling park
Refuse and recycling collection facilities except for single-family dwelling, duplex, child care facility, or group home	W[2, 6.7]	W[2, 6,7]	W[2,6, 7]	W[2, 6,7]	W[2, 6,7]	W[2, 6,7]	W[2, 6,7]	W[2,6,7]	W[26,7]	W[2,6,7]	W[2,6,7]

1. Screening is only required from the view of abutting streets, parking lots, and residentially zoned property. Storage shall not exceed the height of the screening.
2. Six to seven feet in height
3. Six to nine feet in height
4. Abutting streets must also be screened.
5. Screening is required abutting multiple-family dwellings, commercial or industrial uses only.
6. In industrial zones, screening is required only where the refuse collection facility is in a yard abutting a public street, parking lot, or residentially zoned property.
7. Child care facility for 12 or fewer children, group home for five or fewer persons.
8. Child care facility for 13 or more children, group home for six or more persons.

General notes:

9. Screening is subject to height limitations for Vision Clearance Areas (Section 3.03.06) and adjacent to streets (Section 2.01.02).
10. No screening is required where a building wall abuts a property line.
11. Where a wall is required and is located more than two feet from the property line, the yard areas on the exterior of the wall shall be landscaped to a density of one plant unit per 20 square feet.

B. All parking areas, except those for single-family and duplex dwellings, abutting a street shall provide a 42-inch vertical visual screen from the abutting street grade. Acceptable design techniques to provide the screening include plant materials, berms, architectural walls, and depressed grade for the parking area. All screening shall comply with the clear vision standards of this ordinance (Section 3.03.06).

3.06.06 Architectural Walls

A. This Section shall apply to required architectural walls in all zoning districts.

B. Design Standards and Guidelines

1. An architectural wall shall meet the texture, color, and articulation requirements on the face away from the proposed development.
2. An architectural wall should meet the texture, color, and articulation requirements on the face toward the proposed development.
3. An architectural wall shall have a minimum three inch horizontal articulation of at least one linear foot of the wall of intervals not more than 40 feet; and
4. An architectural wall shall have a minimum six inch vertical articulation of at least one linear foot of the wall of intervals not more than 40 feet.
5. An architectural wall shall incorporate at least two colors.
6. An architectural wall shall have an earth tone coloration other than grey on at least eighty percent (80%) of the surface.
7. An architectural wall shall be architecturally treated with scoring, texture, or pattern on at least eighty percent (80%) of the surface.

C. Retaining walls should/shall meet the texture and color requirements of architectural walls in or abutting residential districts, where the texture and color requirements apply to the visible face of the retaining wall.

3.06.07 Significant Trees on Private Property

A. The purpose of this Section is to establish processes and standards which will minimize cutting or destruction of significant trees within the City. Significant trees enhance neighborhoods by creating a sense of character and permanence. In general, significant trees on private property shall be retained, unless determined to be hazardous to life or property.

B. The provisions of this Section apply to the removal of any significant tree and the replacement requirements for significant tree removal.

C. A Significant Tree Removal Permit shall be reviewed as a Type I application to authorize the removal of a significant tree, subject to the following:

1. Approval of Significant Tree Removal Permits shall be held in abeyance between November 1 and May 1, to allow inspection of the deciduous trees when fully leafed.
2. For the removal of a diseased or dangerous tree, a report from a certified arborist or an arborist approved by the City shall be submitted, certifying that the tree is dead or dying, structurally unsound, or hazardous to life or property.
3. If the Director is uncertain whether the arborist’s opinion is valid, the Director may require a second arborist's opinion, and may require that the second opinion be done at a time when trees would be fully leafed.
4. A dangerous tree may be removed prior to obtaining a permit in an emergency, and the

owner shall apply within three days for the removal permit, pursuant to this Section.

D. The issuance of a significant tree removal permit requires the property owner to replace each tree removed with one replacement tree. Each replacement tree shall be at least two inches in caliper. Each replacement tree shall be of a species not prohibited by this Section. The replacement tree shall be of the same size range at maturity as the significant tree replaced.

E. A tree required by the development standards of this ordinance (Section 3.1) or as a condition of permit or land use approval shall qualify as a replacement tree. In the Neighborhood Conservation Overlay District (NCOD), the replacement tree shall be planted on the same property as the significant tree replaced. In other zones, the property owner shall choose the method of replacement. Replacement shall be accomplished by:

1. Planting one tree on the subject property;
2. Planting one tree at a location determined by the Woodburn Community Services Department; or
3. Paying a fee-in-lieu to the Woodburn Community Services Department for the planting of one tree at a future time by the City.

F. The property owner shall pay a mitigation fee for each required replacement tree that is not planted pursuant to this Section. The applicant shall pay the mitigation fee into the City's tree fund. The amount of the mitigation fee shall be established by the City Council in the Master Fee Schedule, based on the average value of a two inch caliper tree available from local nurseries, plus planting costs.

3.07 Architectural Design

The purpose of this Section is to set forth the standards and guidelines relating to the architectural design of buildings in Woodburn. Design standards can promote aesthetically pleasing architecture, increase property values, visually integrate neighborhoods, and enhance the quiet enjoyment of private property.

3.07.01 Applicability of Architectural Design Standards and Guidelines
3.07.02 Single Family, Duplexes and Manufactured Dwellings on Individual Lots in Pre-existing Developments
3.07.03 Single Family, Duplexes and Manufactured Dwellings on Individual Lots in New Developments
3.07.04 Single Family and Duplexes in the Neighborhood Conservation Overlay
3.07.05 Standards for Medium Density Residential Buildings
3.07.06 Standards for Non-Residential Structures in Residential, Commercial and Public/Semi Public Zones
3.07.07 Downtown Development and Conservation Zone
3.07.08 Mixed Use Village Zone
3.07.09 Nodal Neighborhood Commercial Zone
3.07.10 Industrial Zones

3.07.01 Applicability of Architectural Design Standards and Guidelines

A. For a Type I review, the criteria of this Section shall be read as "shall" and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as "should" and shall be applied as guidelines.

B. The following are exempt from the provisions of this Section:

1. Any single-family, duplex, or manufactured dwelling that existed prior to October, 2005, except such dwellings located within the Neighborhood Conservation Overlay District (NCOD).

2. New dwellings in Manufactured Dwelling Parks containing more than three acres.

3.07.02 Single-Family Dwellings, Duplexes and Manufactured Dwellings on Individual Lots in Pre-existing Developments

A. Applicability

This Section shall apply to all new single-family dwellings, duplexes and manufactured dwellings on individual lots in subdivisions and Planned Unit Developments, approved on or before [the date of adoption of this Section] and in partitions.

Manufactured dwellings have different standards for roofing, exterior finish and garage/carports; otherwise, all standards in this Section apply to manufactured dwellings. The term "dwelling" includes single family, duplexes and manufactured dwellings.

B. Roof Standards

1. Pitch

   Site-built dwellings shall have a minimum roof pitch of 4:12. Manufactured dwellings shall have a minimum roof pitch of 3:12.

2. Material

   Roofing material shall be composition shingles, clay or concrete tile, metal, cedar shingles or shakes. Composition shingles shall be architectural style, with a certified performance of at least 25 years.

3. Eaves

   Eaves of a dwelling unit or garage shall provide a minimum 12-inch projection.

C. Exterior Finish

The exterior finish of a dwelling shall have the appearance of either horizontal lap siding, shakes, shingles, brick or stucco. Where horizontal lap siding is used, it shall appear to have a reveal of three to eight inches. Plain concrete, corrugated metal, plywood and press board shall not be used as exterior finish material.

D. Garage

1. Single-family dwellings, duplexes, and manufactured dwellings shall have a garage.
2. The facade containing the vehicular entrance for an attached garage shall either:
   a. Face away from the street frontage of the main pedestrian entry of the dwelling, at an angle of at least 90 degrees, or
   b. Comprise less than half the lateral dimension of the total facade facing a street, or
   c. Comprise no more than 65 percent of total facade of the structure facing the street, including second stories, dormers, and eyebrows.

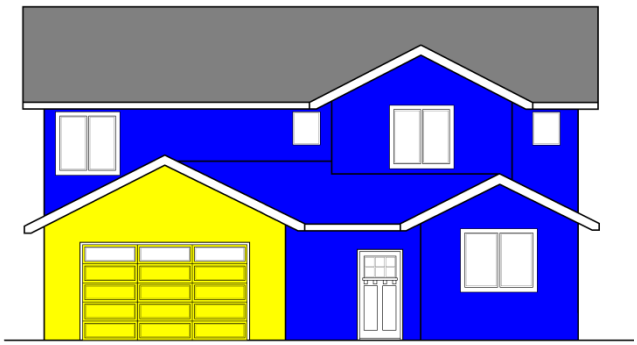


Figure 3.107A – Garage (yellow) comprises less than half the lateral dimension of the facade (yellow plus blue)

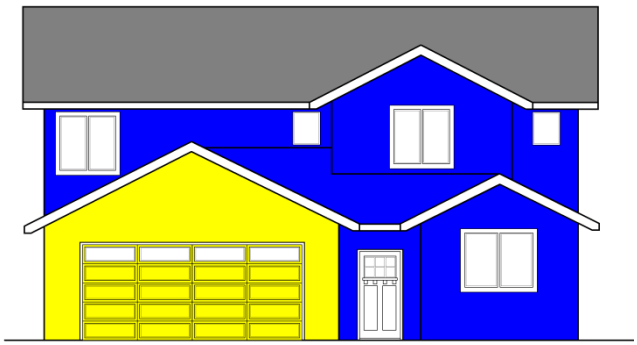


Figure 3.107B – Garage (yellow) comprises no more than 65 percent of total facade (yellow plus blue)

3. The facade containing the vehicular entrance for a detached garage shall either:
   a. Face away from the street frontage of the main pedestrian entrance of the dwelling, at an angle of at least 90 degrees, or

b. Set back at least 20 feet beyond the facade containing the main pedestrian entrance.

c. The area of the facade of the garage shall be no greater than of the facade of the dwelling.

E. Main Pedestrian Entrance

1. The main pedestrian entrance of each dwelling, excluding dwellings on flag lots, shall face the street.

2. The main entrance to each dwelling shall have either:

a. A covered porch, at least 48 square feet in area, with a minimum dimension of six feet on at least one side; or

b. A recessed entry, at least 24 square feet in area, with a minimum dimension of four feet on at least one side.

F. At least 15 percent of the facade wall surface of a dwelling facing a front lot line shall be windows, excluding roofs and non-habitable wall area under the end of a roof, and excluding the garage facade.

G. The front of the dwelling shall either contain:

1. An articulated roof line, incorporating more than one pitch or elevation of the ridge line that is visible in the front elevation, excluding a porch; or

2. A gable, dormer, eyebrow, off-set roof line or other vertical, architectural extension of the building at least 36 inches above the eave; or

3. An off-set line in the facade of the building of at least 36 inches and ten feet in length, excluding a recessed pedestrian entrance or porch.

3.07.03 Single-Family Dwellings, Duplexes and Manufactured Dwellings on Individual Lots in New Developments

A. This Section shall apply to all new single-family dwellings, duplexes and manufactured dwellings on individual lots in subdivisions and Planned Unit Developments approved after [the date of adoption of this Section].

B. Plain concrete, corrugated metal, plywood, T-111, oriented strand board (OSB), and sheet press board shall not be used as exterior finish material.

C. Dwellings shall have at least nine of the following design features:

1. Site-built dwellings shall have a minimum roof pitch of 4:12. Manufactured dwellings shall have a minimum roof pitch of 3:12.

2. Roofing material shall be composition shingles, clay or concrete tile, metal, cedar shingles or shakes. Composition shingles shall be architectural style, with a certified performance of at least 25 years.

3. Eaves of a dwelling unit or garage shall provide a minimum 12 inch projection.

4. The exterior finish shall have the appearance of either horizontal lap siding, shakes, shingles, stone, brick or stucco. Where horizontal lap siding is used, it shall appear to

have a reveal of 3 to 8 inches.

5. The facade containing the vehicular entrance for a garage shall face away from the street frontage of the main pedestrian entry of the dwelling, at an angle of at least 90 degrees.
6. The facade containing the vehicular entrance for an attached garage shall comprise less than half the lateral dimension of the total facade facing a street, or shall comprise no more than 65 percent of the area, including second stories, dormers, and eyebrows, of the total facade of the structure facing the street.
7. The facade containing the vehicular entrance for a detached garage shall be set back at least 20 feet from the facade of the dwelling containing the main pedestrian entrance, and with the area of the facade of the garage no greater than that of the dwelling.
8. The main entrance to each dwelling shall have either:
   a. A covered porch at least 48 square feet in area, with the minimum dimension of six feet on at least one side; or
   b. A recessed entry at least 24 square feet in area, with the minimum dimension of four feet on at least one side.
9. At least 15 percent of the facade wall surface of a dwelling unit facing a front lot line shall be windows, excluding roofs and non-habitable wall area under the end of a roof, and excluding the garage facade.
10. The front of the dwelling shall contain an articulated roof line incorporating more than one pitch or elevation of the ridge line that is visible in the front elevation, excluding a porch.
11. The front of the dwelling shall contain a gable, dormer, eyebrow, off-set roof line or other vertical, architectural extension of the building, at least 36 inches above the eave.
12. The front of the dwelling shall contain a horizontal offset of at least 36 inches in depth and ten feet in length, excluding a recessed pedestrian entrance, porch, or garage that projects in front of the dwelling.

D. Single-family dwellings, duplexes, and manufactured dwellings shall have a garage.

3.07.04 Single-Family Dwellings and Duplexes in the Neighborhood Conservation Overlay District (NCOD)

A. Applicability

1. For any new single-family dwelling, duplex, or accessory structure within the Neighborhood Conservation Overlay (NCOD), all facades shall be subject to architectural review.
2. The exterior remodel to single family dwellings, duplexes, and accessory structures shall be subject to architectural review.
3. At the time of application, the applicant shall choose whether the Design Review shall be conducted as a Type I, II, or III review (Section 5.01, 5.02, 5.03), depending on floor

area. For a Type I review, the criteria of this Section shall be read as "shall" and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as "should" and shall be applied as guidelines.

B. Design Guidelines and Standards

1. The proposed construction should/shall provide architectural details, such as dormers, bays, bracketing, cornices and trim, to add aesthetic visual interest and detail.
2. The design should/shall minimize the negative visual impact of on-site automobile parking within the district by orienting garage openings so that they do not front directly onto a public street. An attached garage opening should either be located a minimum of 10 feet back from the building facade or the garage should be detached.
3. Long, flat facades on buildings should/shall be avoided. Buildings should/shall not be more than 50 feet wide.
4. The character of single-family and duplex roofs shall be maintained. The roof pitch should/shall be a minimum of 6:12.
5. The main entrance of a dwelling should/shall face the street and be covered with a roof.
6. Windows in the building should/shall be wood sash with trim that is at least 5½ inches wide. No pane of glass should/shall be any larger than 30 inches wide by 84 inches high. Glass should/shall be clear or stained.
7. Horizontal wood siding, brick or stucco should/shall be used for exterior finishes. For building additions, the exterior finish should/shall be of the same style and character as the existing building.

3.07.05 Standards for Medium Density Residential Buildings

Note: A medium density residential building is any building where the predominant use is multiple-family dwelling, nursing care or group care facility.

A. At the time of application, the applicant shall choose whether the Design Review shall be conducted as a Type I, II, or III review (Section 5.01, 5.02, 5.03). For a Type I review, the criteria of this Section shall be read as "shall" and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as "should" and shall be applied as guidelines.

B. Open Space

1. Private Open Space
   a. Ground Level Courtyard
      (1) Units within five feet of the finished grade, should/shall have at least 96 square feet of private open space, with no dimension less than six feet.
      (2) Ground level private open space should/shall be visually and physically separated from common open space, through the use of perimeter landscaping or fencing.

b. Balcony

Units more than 5 feet from the finished grade should/shall have at least 48 square feet of private open space in a balcony, with no dimension less than six feet.

2. Common Open Space and Facilities

a. Common open space and facilities consist of the site area and facilities not devoted to dwellings, parking, streets, driveways or storage areas that are available for use by all residents of a development.

b. Required yard setbacks should/shall be included as common open space.

c. Open Space and Facility Design Guidelines and Standards.

(1) A minimum of 30 percent of the net site area of each medium density residential development should/shall be permanently designated for use as common open space and facilities.

(2) The common area should/shall include at least one open space containing 2,000 square feet, with a minimum width of 36 feet.

(3) Facilities to accommodate children's or adult's recreation, meeting or education activities should/shall be provided at a ratio of 36 square feet of outdoor, or 12 square feet of indoor, common area per dwelling unit or living unit. The minimum improved common area for this purpose should/shall be 720 square feet of outdoor or 240 square feet of indoor space. The space for such improvements may be counted as part of the common area required by Section 3.07.05.B.1.c.2 at a 1:1 ratio for outdoor space and 3:1 ratio for indoor space.

C. Architectural Design Guidelines and Standards

1. Building Mass and Facade

a. Buildings should/shall have no dimension greater than 150 feet.

b. Every two attached dwelling or living units should/shall be offset by at least four feet in depth.

c. Individual buildings located within 28 feet of a property line should/shall have a varied setback at least four feet.

d. A flat roof, or the ridge of a sloping roof, should/shall not exceed a horizontal length of 100 feet without providing a difference in elevation of at least four feet.

e. Buildings should/shall incorporate a porch or recessed entry for each ground-level dwelling or living unit. Covered porches and entries should be at least 30 square feet, with no dimension less than six feet. This provision does not apply to buildings for residential care.

f. All habitable rooms, except bathrooms, facing a required front yard should/shall incorporate windows.

g. Staircases providing access above the first floor level should/shall not be visible from a street.

2. Building Materials, Texture and Color

   a. The exterior finish for at least 90 percent of the facade should/shall be:

      (1) Either siding, brick or stucco. Plain concrete, corrugated metal, plywood and sheet press board should/shall not be used as exterior finish material; and

      (2) Either white, tinted with a minimum of 10 parts per 100 of white, or shaded with a minimum of 10 parts per 100 of black or brown. Shading colors with brown or black to create earth tones or tinting colors with white to soften the appearance.

      (3) Fluorescent, "day-glo," or any similar bright color shall not be used on the facade.

   b. The roofing material should/shall be either composition shingles; clay or concrete tile; metal; or cedar shingles or shakes. Composition shingles should/shall be architectural style, with a certified performance of at least 25 years.

3. Pedestrian Circulation

   a. The internal pedestrian system in medium density residential developments should/shall connect to other areas of the site, to other building entrances and to adjacent streets.

   b. When a residential building is sited within 24 feet of a street right-of-way, the building should/shall contain entrances directly accessible from the street.

3.07.06 Standards for Non-Residential Structures in Residential, Commercial and Public/Semi Public Zones

A. The following design guidelines shall be applicable to all non-residential structures and buildings in the RS, RSN, R1S, RM, RMN, CO, CG, and P/SP zones.

B. Architectural Design Guidelines

1. Mass and Bulk Articulation Guidelines

   a. Building facades visible from streets and public parking areas should be articulated, in order to avoid the appearance of box-like structures with unbroken wall surfaces.

   b. The appearance of exterior walls should be enhanced by incorporating three-dimensional design features, including the following:

      (1) Public doorways or passage ways through the building

      (2) Wall offsets or projections

      (3) Variation in building materials or textures

      (4) Arcades, awnings, canopies or porches

2. Materials and Texture Guidelines

   a. Building exteriors should exhibit finishes and textures that reduce the visual monotony of bulky structures and large structural spaces. Building exteriors should enhance visual interest of wall surfaces and harmonize with the structural design.

b. The appearance of exterior surfaces should be enhanced by incorporating the following:

(1) At least 30% of the wall surface abutting a street should be glass.

(2) All walls visible from a street or public parking area should be surfaced with wood, brick, stone, designer block, or stucco, or with siding that has the appearance of wood lap siding.

(3) The use of plain concrete, plain concrete block, corrugated metal, plywood, T-111 and sheet composite siding as exterior finish materials for walls visible from a street or parking area should be avoided.

(4) The color of at least 90 percent of the wall, roof and awning surface visible from a street or public parking area should be an "earth tone" color containing 10 parts, or more of brown or a "tinted" color, containing 10 parts or more white.

(5) Fluorescent, "day-glo," or any similar bright color shall not be used on the building exterior.

3. Multi-Planed Roof Guidelines

a. The roof line at the top of a structure should establish a distinctive top to the building.

b. The roof line should not be flat or hold the same roof line over extended distances. Rather, the roof line should incorporate variations, such as:

(1) Offsets or jogs in the plane of the roof;

(2) Changes in the height of the exterior wall for flat roof buildings, including parapet walls with variations in elevation or cornices

4. Roof-Mounted Equipment Guidelines

All roof-mounted equipment, except solar collectors, should be screened from view by:

a. Locating roof-mounted equipment below the highest vertical element of the building, or

b. Screening roof-mounted equipment using materials of the same character as the structure's basic materials

5. Weather Protection Guidelines

All building faces abutting a street or a public parking area should provide weather protection for pedestrians. Features to provide this protection should include:

a. A continuous walkway at least eight feet wide along the face of the building utilizing a roof overhang, arcade, awnings or canopies

b. Awnings and canopies that incorporate the following design features:

(1) Angled or curved surfaces facing a street or parking area

(2) A covering of fabric, or matte finish vinyl

(3) A constant color and pattern scheme for all buildings within the same development

(4) No internal back lighting

6. Solar Access Protection

Obstruction of existing solar collectors on abutting properties by site development should be minimized.

C. Building Location Guidelines

1. Within the prescribed setbacks, building location and orientation should compliment abutting uses and development patterns.

2. The maximum yard abutting a street should be 150 feet.

3.07.07 Downtown Development and Conservation (DDC) Zone

A. Applicability

The purpose of these development standards is to guide the design of buildings constructed in the Downtown Development and Conservation (DDC) zoning district to ensure that, through appropriate use of facades, windows, building orientation, and architectural details, new structures and alterations of existing structures are physically and visually compatible with other buildings within the downtown business district. The majority of the existing buildings in downtown Woodburn reflect architectural styles that were popular during the late nineteenth and early twentieth century.

1. The provisions of this ordinance shall apply to the following activities within the DDC:

a. All new building construction;

b. New construction, restorations, and remodels. Restorations shall be defined as all exterior repairs, replacement of materials, alterations or changes, including reroofing, painting, window, and sign replacement, as well as any exterior building or site modification that requires a building permit;

c. All new signage.

2. This ordinance shall not apply to the following activities or uses:

a. Maintenance of the exterior of an existing structure, such as reroofing, residing, or repainting where similar materials and colors are used that comply with this ordinance;

b. Interior remodeling;

c. Single-family detached dwellings;

d. Single-family dwellings that are used for businesses or home occupations.

3. This ordinance shall apply only to those portions of a building or sign that are proposed for construction or modification, and shall not extend to other elements of the building or sign that may be out of compliance with the requirements of this ordinance (i.e., a permit to replace a single window shall not require that all other windows on the

building that may be out of compliance with this ordinance to be replaced, unless such action is initiated by the property owner). However, if a building should be destroyed due to fire, accident, or an act of God, the new or replacement structure shall be rebuilt to conform to the requirements of this ordinance.

4. At the time of application, the applicant shall choose whether the Design Review shall be conducted as a Type I, II, or III review (Section 5.01, 5.02, 5.03). For a Type I review, the criteria of this Section shall be read as "shall" and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as "should" and shall be applied as guidelines.

B. Design Guidelines or Standards

Standards for new construction shall require builders to conform to the architectural form of Woodburn's historic period (1880's through 1940's). As such, new construction shall conform to the following standards listed below. The following list of buildings is provided as a reference guide to those buildings which display characteristics intended by the standards.

- Association Building on Front Street between Garfield and Hayes Streets
- Fulmer Building at Front and Lincoln Streets
- Old City Hall at First and Lincoln Streets
- Carnegie Library at Second and Garfield Streets
- Bank of Woodburn building at Front and Arthur Streets
- Masonic building at Front and Arthur Streets

1. Site Development

   a. Building fronts and entrances shall be oriented toward the street. Buildings with frontages on two or more streets shall be oriented to at least one street.

   b. Building facades should be set at the property edge along the sidewalk. Buildings with frontages on 2 or more streets should be set at the property edge on at least one street.

2. Building Scale

   a. The overall size and proportion of new structures shall be compatible with the scale of nearby traditional storefront buildings constructed during the historic period. This standard may be met by either designing the building's size and proportions to be similar to comparable historic structures in the downtown, or by the design of the facade so that it breaks a larger mass into smaller units that are similar to comparable historic structures.

   b. If practical, new buildings should have the same floor height as adjoining buildings in case there is ever a desire to link the storefronts.

   c. The relationship between the height and width of the main facade of the building shall be visibly compatible with adjoining or nearby buildings of the historic period or style. This standard may be met through either similar height and width, or,

through design elements that provide visual continuity with adjoining or nearby buildings of the historic period.

3. Building Height

   New buildings of at least two stories in height are encouraged.

4. Building Width

   a. All new buildings should maximize lot frontage as much as is practicable.

   b. New buildings whose street frontage is more than 50 feet wide shall be designed to convey a sense of division through the use of pilasters, windows and door openings, recessed entries, off-sets or other architectural details.

5. Storefronts

   a. Primary entrances shall be oriented to the street. Corner buildings shall have corner entrances, or shall provide at least one entrance within 20 feet of the street corner or a corner plaza.

   b. The upper windows of multi-story buildings shall use multi-pane double-hung sash windows or the equivalent style.

   c. The relationship between solid walls and window and door openings on the main facade shall be visually compatible with adjoining or nearby structures from the historic period or style. Ideally, first floor storefronts should be about 80 percent glass from approximately two feet above grade to approximately 10 feet above grade.

   d. The relationship of width and height of window and door openings shall be visually compatible with adjoining or nearby buildings from the historic period or style.

   e. Blank walls, walls without window or door openings, are not permitted along public streets.

   f. Windows and doorways shall not be covered over with paper, boards, or cardboard except during times of construction or remodeling and shall be limited to a period of 120 days, unless an extension is otherwise granted by the Director.

   g. Doors shall match the materials, design, and character of the display window framing.

   h. Architectural features such as awnings, windows, cornices, etc., shall be provided at the second floor to differentiate the storefront from the upper levels of the building, to add visual interest, and to allow the storefront to function as the base for the rest of the building.

6. Facade Materials and Texture

   a. The materials and texture of the facade shall be compatible with those on buildings constructed during the historic period.

   b. Permitted exterior facade materials include: brick, cast iron, relatively narrow horizontal wood or masonry siding, and stucco. Plywood siding, T-111, and vertical board and batten are prohibited.

c. Exposed concrete block facades facing the street are not allowed. Split-face or scored-face block may be used in small quantities for foundations or other non-dominant features.

d. All main facade materials shall be painted (except brick, for which painting is optional).

e. Metal siding shall not be used as a building material on the facade facing a street.

7. Windows

a. Windows which allow views to the interior activity or display areas are encouraged. Windows shall include sills at the bottom and pediments at the top. Glass curtain walls, reflective glass, and painted or darkly tinted glass shall not be used on the first floor.

b. Ground Floor Windows

(1) All new buildings must provide ground floor windows along adjacent street rights-of-way.

(2) Required window areas must be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows.

(3) Required windows must have a sill no more than four feet above grade. Where interior floor levels prohibit such placement, the sill must be raised to allow it to be no more than two feet above the finished floor level, up to a maximum sill height of six feet above grade.

(4) Glass curtain windows are not permitted.

(5) Darkly tinted windows and mirrored windows that block two-way visibility are prohibited as ground floor windows along street facades.

(6) Any wall that faces a public right-of-way must contain at least 20% of the ground floor wall area in display areas, windows, or doorways. Blank walls are prohibited.

(7) Upper Floor Window Standards

(i) Glass area dimensions shall not exceed five feet by seven feet. (The longest dimension may be taken either horizontally or vertically.)

(ii) Windows must have trim or molding at least two inches wide around their perimeters.

(iii) At least half of all the window area in upper floors must be made up of glass panes with dimensions no greater than two feet by three feet.

8. Roofs

a. Main facade roofs (lower than a 6:12 pitch) shall be concealed behind a square or stepped parapet. Flat roofs are permitted behind a parapet.

b. All heating, ventilation, and air conditioning (HVAC) systems located on top of a roof shall be located or screened so that they are not visible from the street. Dish-style antennas shall be located or screened so that they are not visible from

the street. All screening material shall be natural and shall be compatible with the facade of the front of the building.

c. New roofs on existing buildings, or on additions to existing buildings, shall match the pitch and form of the original roof.

d. Shed roofs are permitted on one-story rear additions.

e. Back-lit or internally illuminated roofs are prohibited.

9. Awnings and Canopies

a. The use of awnings or canopies over sidewalks is encouraged.

b. Awnings shall extend out from the building front to cover at least two-thirds of the sidewalk, unless it is shown that such a distance will interfere with existing trees, poles, etc., to provide pedestrian protection from the elements.

c. Awnings shall be flat or sloping. Awnings shall be made of metal, wood, canvas or similar materials. Rounded bubble or plastic awnings are prohibited. Fully glazed awnings are not permitted.

d. Awnings shall fit within the window bays (either above the main glass or the transom light) so as not to obscure or distract from significant architectural features.

e. The color of the awning shall be compatible with its attached building.

f. Awnings shall not be internally illuminated. However, lighting which is intended to provide illumination to the sidewalk and signage is permitted.

g. Awnings shall be a minimum of eight feet above the sidewalk.

h. Where feasible, awnings shall be placed at the same height as those on adjacent buildings in order to maintain a consistent horizontal rhythm along the street front.

10. Color

a. The painting of brick walls is permitted.

b. Subtle or subdued tones commonly used during the historic period shall be used. Bright or neon colors are prohibited.

c. Different colors shall be used to accentuate and highlight trim, windows, and other building features.

11. Site Design

Landscaping shall not obliterate street and sidewalk views of signage or architectural features on historic buildings.

12. Off-Street Parking

    a. All parking and access standards of this ordinance (Sections 3.04 and 3.05) shall apply, except that there shall be no required parking in the Downtown Development and Conservation (DDC) zone.

    b. Parking areas shall not be located between the front of the building and the street.

    c. Parking areas with more than 10 spaces shall be divided by landscaped areas or walkways, or by a building or group of buildings.

    d. Knee walls are required to screen street side parking lots. Knee walls shall not exceed three feet in height and shall be constructed with masonry. Alternatively, a combination of a wall or fence and landscaping may be approved if they provide an effective buffer and low-level screen of the parking area.

C. External Storage of Merchandise

The external storage of merchandise or materials, directly or indirectly related to a business, is prohibited.

D. Outdoor Displays of Merchandise

Outdoor displays of merchandise are permitted during business hours only and shall not exceed ten percent of the total retail sales area. Displays of merchandise on public sidewalks may not reduce usable walking area widths to less than four feet.

E. Outdoor Eating Areas

Outdoor dining areas are encouraged, and are permitted on public sidewalks. Outdoor food vending carts are permitted. Eating areas or vending carts may not reduce usable walking area widths on public sidewalks to less than four feet. Mobile food kitchens are prohibited in the DDC district.

3.07.08 Mixed Use Village (MUV) Zone

A. Applicability and Procedure

The following design guidelines and standards shall be applicable to all buildings in the Mixed Use Village (MUV) zone that include a non-residential use, whether or not residential uses are included in the structure.

B. Site Development Standards

1. The primary building entrance shall either be oriented toward the street, toward a side yard, or any angle in between. For the purposes of this Section, the "primary building entrance" is the main public entrance to the building. In the case where no public entrance exists, the "primary building entrance" is the main employee entrance. Where there are multiple buildings on a lot, all buildings shall comply with this standard.

2. Buildings should occupy a minimum of 50 percent of all street frontages along public streets. Buildings should be located at public street intersections.

C. On-Site Pedestrian Circulation

1. Walkways shall connect all building entrances with adjacent sidewalks and on-site parking areas, and shall connect off-site adjacent uses to the site unless topographic or existing development constraints preclude making certain walkway connections.

2. Where walkways cross a parking area or driveway they shall be clearly marked with contrasting paving materials (such as light-color concrete inlay between asphalt), which may be part of a raised/hump crossing area. Paint or thermo-plastic striping and similar types of non-permanent applications may be approved for crosswalks not exceeding 24 feet in length.

D. Drive-Through Businesses

In addition to the requirements of Section 3.04.02, the following standards shall apply to drive-through businesses:

1. Drive-through windows are prohibited on a building facade that faces Highway 99E.

2. Drive-through uses shall be located so that access and egress to the drive-through features are from an on-site drive aisle or other on-site circulation facility, not a public street.

3. A maximum of two drive-through service lanes shall be permitted between a building facade and a public street right-of-way.

E. Architectural Design Guidelines and Standards

1. Street-Facing Building Facades

All street-facing building elevations that are set back 50 feet or less from a public street shall provide visual interest and avoid blank walls by meeting one or both of subsections a and b, below:

a. A minimum of 40 percent of the ground floor wall area shall contain windows, display areas, or doorway openings. Windows, display areas, or doorway openings used to meet this standard shall comply with the following provisions:

(1) Required window areas shall be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows.

(2) Darkly tinted windows and mirrored windows that block two-way visibility shall not be used to meet this standard.

(3) The sill or lower edge of a window, display area, or doorway used to meet this standard shall be no more than four feet above grade. Where interior floor levels prohibit such placement, the sill or lower edge must be raised to allow it to be no more than two feet above the finished floor level, up to a maximum height of six feet above grade.

(4) Windows and doorways used to meet this standard shall not be covered over with paper, boards, or cardboard, except during times of construction or remodeling, and shall be limited to a period of 120 days, unless an extension is otherwise granted by the Director.

(5) Ground floor wall area shall be measured from three feet above grade to nine

feet above grade along the entire width of the street-facing elevation.

b. Building facades that exceed 40 feet in length shall incorporate features to vary the look of the facade at intervals not to exceed forty feet. Such features may include variable planes, projections, bays, dormers, setbacks, canopies, awnings, parapets, or changes in the roof line, materials, color, or textures.

2. All other building facades visible from streets and public parking areas should provide facade variations, as specified in this Section (3.07.08.E.1.b).

F. Crime Prevention Through Environmental Design

In order to enhance public safety and provide for "eyes on the street", all buildings that will regularly be occupied should provide windows that allow a view of the street in all street-facing building elevations.

G. Weather Protection

Weather protection for pedestrians, such as awnings, canopies and arcades, should be provided at building entrances. Weather protection is encouraged along building frontages abutting a public sidewalk or a hard-surfaced expansion of a sidewalk, and along building frontages between a building entrance and a public street or access way. Awnings and canopies shall not be back-lit.

H. Building Materials

Corrugated metal, plywood, sheet press board or vinyl siding should be used as exterior finish material. Plain concrete block and plain concrete should not be used as exterior finish material, except as a foundation material where the foundation material should not be revealed for more than two feet.

I. Roofs and Roof Lines

Except in the case of a building entrance feature, roofs should be designed as an extension of the primary materials used for the building and should respect the building's structural system and architectural style. False fronts and false roofs should not be used.

J. Roof-Mounted Equipment

All roof-mounted equipment shall be screened from view from adjacent public streets. Satellite dishes and other communication equipment shall be set back or positioned on a roof so that exposure from adjacent public streets is minimized. Solar heating panels shall be exempt from this guideline.

K. Off-Street Parking

1. Parking areas shall be limited to 50 percent of the street frontage abutting a Major Arterial.

2. Parking areas shall not be located within a front yard or within a side yard abutting a Major Arterial.

3. Parking areas with more than ten spaces shall be divided by landscaped areas or walkways, or by a building or group of buildings.

L. Screening Standards

Outdoor storage shall be screened from view from the adjacent streets by a wall. Outdoor displays of merchandise not exceeding ten percent of the total retail sales area are allowed. Displays of merchandise on public sidewalks may not reduce usable walking area widths to less than four feet.

3.07.09 Nodal Neighborhood Commercial (NNC) Zone

A. Applicability

The following standards shall apply in the Nodal Neighborhood Commercial (NNC) zone.

B. Site Design Guidelines

1. Buildings should occupy a minimum of 50 percent of all street frontages along public streets. Buildings should be located at public street intersections.
2. Landscaping, an arcade, or a hard-surfaced expansion of the pedestrian path should be provided between a structure and a public street.
3. Hard-surfaced areas should be constructed with scored concrete or modular paving material. Benches and other street furnishings are encouraged.
4. A walkway connection should connect a building entrance and a public street. This walkway should be at least six feet wide and be paved with scored concrete or modular paving materials. Building entrances at corners near a public street intersection are encouraged.
5. Parking for buildings or phases adjacent to public streets should be located to the side or rear of newly constructed buildings.
6. Off-street parking should be limited to 50 percent of the street frontage, when located abutting a street.

C. Architectural Design Standards

1. Applicability

At the time of application, the applicant shall choose whether the Design Review of new buildings shall be conducted as a Type I review following the procedures of Section 5.01, or as a Type II or III review following the procedures of Section 5.02 or 5.03.

2. Architectural Design Guidelines and Standards

a. Ground Floor Windows

All street-facing building elevations that are set back 10 feet or less from a public street should include a minimum of 50 percent of the ground floor wall area with windows, display areas or doorway openings. The ground floor wall area shall be measured from three feet above grade to nine feet above grade along the entire width of the street-facing elevation. The ground floor window requirement should be met within the ground floor wall area and for glass doorway openings to the ground level. Up to 50 percent of the required ground floor window area on a

particular street-facing building elevation may be met on an adjoining building elevation when the adjoining elevation is also street-facing and set back ten feet or less.

b. Building Facades

No building facade should/shall extend for more than 300 feet without a pedestrian connection between or through the building. Facades that face a public street should/shall extend no more than 50 feet without providing at least one of the following features:

(1) A variation in building material;

(2) A building off-set of at least one foot;

(3) A wall area that is entirely separated from other wall areas by a projection, such as an arcade; or

(4) By other design features that reflect the building's structural system.

c. Weather Protection

Weather protection for pedestrians, such as awnings, canopies and arcades should/shall be provided at building entrances. Weather protection is encouraged along building frontages abutting a public sidewalk or a hard-surfaced expansion of a sidewalk, and along building frontages between a building entrance and a public street or access way. Awnings and canopies shall not be illuminated internally.

d. Building Materials

Corrugated metal, plywood, sheet press board or vinyl siding should/shall not be used as exterior finish material. Plain concrete block and plain concrete should/shall not be used as exterior finish material, except as a foundation material where the foundation material should/shall not be revealed for more than two feet.

e. Roofs and Roof Lines

Except in the case of a building entrance feature, roofs should/shall be designed as an extension of the primary materials used for the building and should respect the building's structural system and architectural style. False fronts and false roofs should/shall not be used.

f. Roof-Mounted Equipment

All roof-mounted equipment, except solar collectors, shall be screened from view by:

(1) Locating roof-mounted equipment below the highest vertical element of the building, or

(2) Screening roof-mounted equipment using materials of the same character as the structure's basic materials.

3.07.10 Industrial Zones

A. Applicability

The following design guidelines shall apply to all structures and buildings in the IP, IL and SWIR zones.

B. Design Guidelines

1. Building Bulk and Scale

Long blank walls abutting streets should be avoided. The visual impact of building and scale should be reduced by:

a. Articulating building facades;

b. Landscaping the area abutting building walls, including plant materials that provide vertical accents;

c. Tying building entrances to the overall mass and composition of the building;

d. Minimizing the use of smooth concrete, concrete block and all types of metal siding;

e. Shading colors with brown or black to create earth tones or tinting colors with white to soften the appearance. Day-glow, fluorescent and other intense colors shall be prohibited;

f. Screening exterior building equipment, including roof top equipment, from view; and

g. Altering roof lines, constructing cornices, or parapets that offset the continuous plane of large buildings and extended building lines.

2. Loading

a. Loading facilities should be located at the rear or side of structures.

b. The visual impact of loading facilities abutting a street should be mitigated by:

(1) Offsetting the location of the driveway entrance and the loading dock; and
(2) Screening the loading area with a sight-obscuring fence, wall or hedge.

c. Loading areas should be located on the site so that backing onto or off the street frontage is not required.

3. Outdoor Lighting

All outdoor lighting should be designed so as not to shine or reflect into any adjacent residentially zoned or used property, and shall not cast a glare onto moving vehicles on any public street.

4. Solar Access Protection

Obstruction of existing solar collectors on abutting properties by site development should be minimized.

3.08 Partitions and Subdivisions

3.08.01 Requirements

All partitions and subdivisions shall comply with the standards of ORS Chapter 92 and the Woodburn Development Ordinance.

3.09 Planned Unit Developments

The purpose of this Section is to establish the requirements for Planned Unit Developments (PUDs). PUDs allow flexible development standards, unique street cross-sections, and more variety in permitted uses. They are especially appropriate when developing properties with unique topographic, geotechnical, or other constraints. They also encourage innovation and creative approaches for developing land. In exchange for the ability to modify development and use standards, PUDs must provide common open space and enhanced public amenities.

3.09.01 Allowable Types and Minimum Area of PUDs
3.09.02 Allowed Uses
3.09.03 Density Transfer
3.09.04 Conceptual Development Plan
3.09.05 Detailed Development Plan
3.09.06 Development Standards
3.09.07 Modifications to an Approved Detailed Development Plan
3.09.08 Nullification
3.09.09 Owners/Tenants Association
3.09.10 Phasing

3.09.01 Allowable Types and Minimum Area of PUDs

A. Transfer of Density PUD

1. A Transfer of Density PUD shall consist entirely of property in any residential zone, or in more than one residential zone. A Transfer of Density PUD may only be used to transfer residential density from undevelopable areas of a site (riparian corridor, floodplain, wetlands, unstable soils or slopes) to developable areas of a site, but not to increase the overall number of dwelling units allowed on the site. Note: This development option is often called cluster housing.
2. There is no minimum site area for a Transfer of Density PUD.

B. Residential PUD

1. A Residential PUD shall consist entirely of property zoned RS, RSN, R1S, or P/SP, or in more than one such zone. A PUD is not allowed in the Neighborhood Conservation Overlay District (NCOD).
2. A Residential PUD shall contain a minimum of two acres.

C. Mixed-Use PUD

1. A Mixed-Use PUD may consist of property in any zone or zones. A Mixed-Use PUD is not allowed in the Neighborhood Conservation Overlay District (NCOD).
2. A Mixed-Use PUD shall contain a minimum of three acres.

3.09.02 Allowed Uses

A. Transfer of Density PUD

Single-family dwellings, manufactured dwellings, duplexes, row houses, and multiple-family dwellings shall be allowed in a Transfer of Density PUD.

B. Residential PUD

Any use allowed in any residential zone shall be allowed in a Residential PUD (see Table 2.02A). No separate Conditional Use process shall be required for any use that is described in the Detailed Development Plan and the project narrative.

C. Mixed-Use PUD

1. Any use allowed in any zone shall be allowed in a Mixed-Use PUD (see Table 2.02A). No separate Conditional Use process shall be required for any use that is described in the Detailed Development Plan and the project narrative.
2. Mixed-Use PUDs are limited to a maximum of one third of the gross area of the non-district uses. There shall be no net increase of commercial or industrial area. Example: Commercial or industrial uses are limited to one third of the gross area of a residential zone. Residential uses are likewise limited to one third of the area of a commercial or industrial zone but are unrestricted in a residential zone.
3. Industrial uses shall be separated from residential uses (whether within the PUD or outside it) by at least 30 feet, except for one dwelling unit in conjunction with an industrial use, as allowed by Table 2.04A.

3.09.03 Density Transfer

A. Any PUD may be used to transfer residential density from undevelopable areas of a site (riparian corridor, floodplain, wetlands, unstable soils or slopes) to developable areas of a site. Up to 40 percent of the density may be transferred, except as provided in Sections B through G, below. No more than 100 percent of the density may be transferred.

B. If the PUD dedicates to the City or provides an easement for a trail or bike path shown in any adopted City Plan, an additional 20 percent of the density may be transferred.

C. If the PUD dedicates to the City property abutting a public park, the Commission may allow up to an additional 20 percent of the density to be transferred, commensurate with the amount and usability of the property dedicated.

D. If the improved common area of the PUD is available for use by the public, the Commission may allow up to an additional 10 percent of the density to be transferred, commensurate with the amount and usability of the improved common area. The area must be permanently posted with a sign reading, “This common area is available for use by the public.”

E. If the PUD plan proposes landscaping or buffering that exceeds the WDO minimum standards by at least 25 percent, the Commission may allow up to an additional 20 percent of the density to be transferred, commensurate with the amount, quality, and variety of the enhanced landscaping or buffering.

F. If the PUD plan proposes stormwater mitigation measures that exceed minimum City standards by at least 25 percent, the Commission may allow up to an additional 10 percent of the density to be transferred, upon a recommendation by the Public Works Department.

G. If the PUD plan proposes other environmental, sustainability, or architectural enhancements, the Commission may allow up to an additional 10 percent of the density to be transferred, commensurate with the amount, quality, and community benefit of the enhancements. Such enhancements may include, but are not limited to, solar heating or electrical generation, community gardens, public art, mitigation of off-site stormwater, and greywater diversion.

3.09.04 Conceptual Development Plan

A. PUDs require both a Conceptual Development Plan and a Detailed Development Plan. These reviews may be accomplished sequentially or as a consolidated review, at the applicant's discretion.

B. A Conceptual Development Plan shall include drawings and a narrative describing the surrounding neighborhood, existing site conditions, general development areas, phasing, land uses, building envelopes, architectural theme, landscaping and buffering, streets, bicycle and pedestrian circulation, common areas, utility locations, sign theme, and other information the Director may deem necessary to convey the concept plan.

3.09.05 Detailed Development Plan

A. PUDs require both a Conceptual Development Plan and a Detailed Development Plan. These reviews may be accomplished sequentially or as a consolidated review, at the applicant's discretion.

B. No building, grading, access, or other development permit may be issued until a Detailed Development Plan has been approved for at least one phase of the project.

C. Buildings shown on a Detailed Development Plan are exempt from Design Review if they are in substantial conformity to the Detailed Development Plan (see Section 3.07.01.B).

D. A Detailed Development Plan shall include drawings and a narrative sufficient to demonstrate compliance with the Conceptual Development Plan and any conditions of approval previously imposed. A Detailed Development Plan shall provide specific information regarding the site layout, architecture, and proposed amenities. A Detailed Development Plan that proposes land uses not in the Conceptual Development Plan or that deviates by more than ten percent from any development standard in the Conceptual Development Plan for any phase, or that does not meet the standards of this Section shall not be approved. The applicant may request that the decision-maker approve such a plan as an amended Conceptual Development Plan.

3.09.06 Development Standards

A PUD is intended to allow flexibility in the development standards of Sections 3.01 through 3.10. The Detailed Development Plan may propose modified standards without a separate

Variance. Any standard that is not proposed for modification shall apply to the PUD. The development standards stated below shall not be modified through the PUD process.

A. Common area and density shall comply with Table 3.09A.

Common Area and Density Standards for Planned Unit Developments
Table 3.09A

		Transfer of Density	Residential	Mixed-Use
Common Area, Minimum	Four or fewer dwelling units	All undevelopable site area		
	Five or more dwelling units, or nonresidential uses	30 percent of gross site area, including all undevelopable site area [1]		
Improved Common Area, Minimum	Four or fewer dwelling units	None		
	Five or more dwelling units	100 square feet per dwelling unit		
	Nonresidential uses	None	None	None
Residential Density, Minimum (units per net acre)		5.2	5.2	5.2 [2]
Residential Density, Maximum (units per net acre)	Multiple-family dwelling	16	16	16
	Child care facility, group care facility or nursing home	32 [3]	32 [3]	32 [3]
	Manufactured dwelling park	12	12	12
	Any other use	Not specified [4]	Not specified [4]	Not specified [4]

1. At least one common area shall be sized to accommodate a circle 25 feet in diameter.
2. In residential zones only. There is no minimum for non-residential zones.
3. Child care facility for 13 or more children, group home for six or more persons.
4. The maximum density is determined by setbacks, off-street parking, open space, and other requirements.

B. Improved Common Area

1. Common areas are deemed improved if they are provided with benches, playground equipment, gazebos, picnic facilities, or similar amenities. Lawn area by itself does not constitute improvement. Trails or paths do not constitute improvement, unless they connect to the public trail system.
2. Common meeting or recreation rooms are deemed to be improved common areas.
3. Improved common areas are subject to the performance guarantee provisions of Section 4.02.08.

C. Streets

1. A PUD shall conform to and, where possible, enhance existing or planned vehicle, pedestrian and bicycle networks, including connections and functionality. Note: See Figures 7-1 (Functional Classification Designations), 7-3 (Pedestrian Plan), and 7-4 (Bicycle Plan) of the Transportation System Plan.
2. All streets shall be public.
3. Boundary and connecting streets shall use the street sections of Section 3.01.04.
4. Internal streets may use the street sections of Section 3.01.04, or the PUD may propose other street sections, provided that the streets:

a. conform to the Oregon Fire Code (see Figures 3.04C and 3.04D)

b. include sidewalks, and

c. are constructed to the specifications of the Public Works Department.

D. Parking

If a front setback of less than 20 feet is proposed, the requirement of Section 3.05.03 for an improved parking pad for single-family and duplex dwellings may be satisfied by on-street parking or by a common off-street parking lot.

E. Signs

1. A PUD may include a sign plan to require a common architectural design and location.
2. The standards of the Mixed Use Village (MUV) zone shall apply to commercial uses in the residential zones of a Mixed-Use PUD.

3.09.07 Modifications to an Approved Detailed Development Plan

A. The Director may administratively approve minor modifications to an approved Detailed Development Plan.

B. Major modifications are those that propose to change the proposed uses, increase density, relocate buildings, parking, or access points, reduce common area or the amenities provided in improved common area, or, in the opinion of the Director, are more than minor modifications. Major modifications to an Approved Detailed Development Plan shall be reviewed as a Modification of Conditions pursuant to Section 4.02.07.

3.09.08 Nullification

A. Nullification of a PUD shall be reviewed as a Modification of Conditions pursuant to Section 4.02.07. The burden of proof is on the applicant to justify nullification of the PUD, giving substantial evidence that:

1. Developing the property under conventional standards and regulations will not create nonconforming development;
2. Special circumstances, such as building relationships, drainage ways, public

improvements, topography, and so forth that were to be addressed through the PUD can be dealt with as effectively with conventional standards;

3. Conditions of approval of the PUD can be met with conventional standards, or are no longer necessary; and
4. No prior commitments involving the property (such as density transfer, public improvements and activities, building relationships, recreational facilities, open space, or phasing of development) were made that would adversely affect the property, other properties, or the City.

3.09.09 Owners/Tenants Association

Any land and structures not dedicated to the public, but reserved for the common use of the owners or tenants, shall be subject to control by an association of owners or tenants.

3.09.10 Phasing

A. A PUD may be developed in phases, pursuant to Section 5.03.05.

B. Phases shall be functionally self-contained with regard to access, parking, utilities, open spaces, and similar physical features, and capable of occupancy, operation, and maintenance upon completion.

C. The phased provision of common areas and improvements shall be roughly proportional to the development of housing and other elements intended for private ownership.

D. At least one improved common area sized to accommodate a circle 25 feet in diameter shall be provided with the first phase.

3.10 Signs

3.10.01	Purpose
3.10.02	Applicability
3.10.03	Computation of Sign Area
3.10.04	Definitions
3.10.05	Sign Permit Required
3.10.06	General Requirements
3.10.07	Signs Exempt From Permit Requirements
3.10.08	Prohibited Signs
3.10.09	Temporary Signs
3.10.10	Permanent Sign Allowances
3.10.11	Nonconforming Signs
3.10.12	Electronic Changing Image Signs

3.10.01 Purpose

A. To the maximum extent permitted by the U.S. and Oregon Constitutions, the purpose of these regulations is to preserve and improve the appearance of the City and to eliminate hazards to pedestrians and motorists brought about by distracting sign displays. The regulations for signs have the following specific objectives:

1. To ensure that signs are designed, constructed, installed and maintained according to minimum standards to safeguard life, health, property and public welfare;
2. To allow and promote positive conditions for sign communication, while at the same time avoiding nuisances to nearby properties;
3. To reflect and support the desired character and development patterns of the various zones and overlay zones and promote an attractive environment;
4. To allow for adequate and effective signs in commercial and industrial zones, while preventing signs from dominating the appearance of the area;
5. To improve pedestrian and traffic safety; and
6. To ensure that the constitutionally guaranteed right of free speech is protected.

B. The regulations allow for a variety of sign types and sizes for a site. The provisions do not ensure or provide for every property or business owner's desired level of visibility for the signs. The sign standards are intended to allow signs to have adequate visibility from streets that abut a site, but not necessarily to streets farther away.

3.10.02 Applicability

These regulations apply to signs located within the City. The application of these regulations in no way limits the power of the City to enact other ordinances related to signs.

3.10.03 Computation of Sign Area

A. The area of freestanding signs and wall signs with one or more cabinets is the area of the display surface.

B. The area of wall signs composed of individual elements, including, but not limited to, channel letters or painted letters or images, is the area of three rectangles around and enclosing the entire message or image.

Figure 3.10A – Three Rectangles Enclose the Message or Image

Figure 3. 110B – Three Rectangles Enclose the Message or Image

C. The area of A-frame signs is computed by the measurement of one of the faces.

D. The area of freestanding and projecting signs is computed by the measurement of one of the faces when two display faces are parallel or within 30 degrees of being parallel to each other, and are part of the same sign structure. For any sign that has two display surfaces that do not meet these criteria, or has more than two display surfaces, each surface shall be included when determining the area of the sign.

Figure 3.10C – Sign Faces Less than 30 Degrees Apart

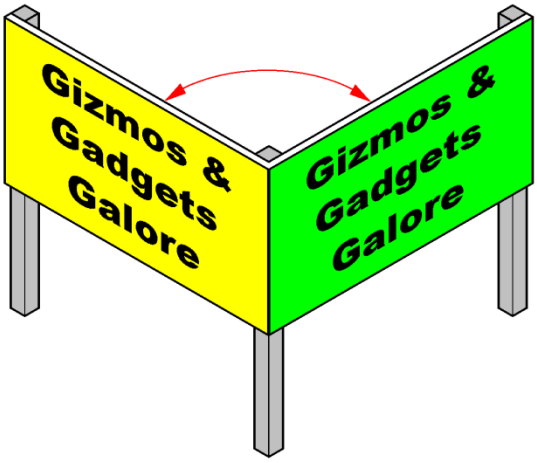


Figure 3.10D – Sign Faces More than 30 Degrees Apart

E. Where a sign is of a three-dimensional, round or irregular solid shape, the largest cross-section shall be used in a horizontal projection for the purpose of determining sign area.

Figure 3.10E – Area of a Three-Dimensional Sign

F. Sign area shall not include embellishments such as pole covers, decorative roofing, foundation or supports, provided there are no words, symbols or logos on such embellishments.

3.10.04 Definitions

Words used in the WDO have their normal dictionary meaning, unless they are specifically defined by the WDO.

Awning: A shelter projecting from, and supported by, the exterior wall of a building on a supporting framework. The awning may be constructed of rigid or non-rigid materials.

Bench: A seat located upon or adjacent to public property, for the use of a combination of passersby or persons awaiting transportation.

Building Code: The most current edition of the Oregon State Structural Specialty Code.

Canopy: A permanent unenclosed roof structure for the purpose of providing shelter to patrons in automobiles.

Complex: Any group of two or more buildings, or individual businesses within a single building, provided at least two of the businesses have separate exterior entrances, on a site that is planned and developed to function as a unit and which has common on-site parking, circulation and access. A complex may consist of multiple lots or parcels that may or may not be under common ownership.

Display Surface: The area made available by the sign for the purpose of displaying a message or image. The display surface includes the area of the message or image and the background.

Facade: The exterior face or wall of a building.

Fluorescent (color): Strikingly bright, vivid, or glowing.

Glare: Illumination of a sign that either directly, or indirectly from reflection, causes illumination on other properties or rights-of-way in excess of a measurement of 0.5 foot-candles of light, measured at the property line.

Height: Height is measured from the lowest point of the grade below the sign (excluding artificial berm) to the topmost point of the sign.

Marquee: A permanent roofed structure attached to, and supported by, a building, and projecting out from a building wall, or over public access, but not including a canopy or awning.

Premises: The land and buildings contained within the boundaries of a single-tenant site or complex.

Sign: Materials placed or constructed, or light projected, that (1) conveys a message or image and (2) is used to inform or attract the attention of the public. Signs, materials, or lights meeting this definition are commonly referred to as signs, placards, A-frame signs, posters, billboards, murals, diagrams, banners, pennants, flags, or projected slides, images or holograms. The scope of the term "sign" does not depend on the content of the message or image conveyed. Specific definitions for signs regulated in Section 3.10 include the following:

A-Frame Sign: A double-faced temporary sign constructed with an A-shaped frame, composed of two sign boards attached at the top and separate at the bottom, not permanently attached to the ground, but secured to the ground or sufficiently weighted to prevent the sign from being blown from its location or easily moved.

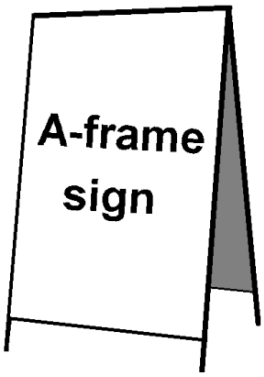


Figure 3.10F – A-Frame Sign

Awning Sign: A sign attached to, or incorporated into, an awning.

Balloon: An inflatable device less than 36 inches in its greatest dimension and anchored by some means to a structure or the ground.

Banner Sign: A sign made of fabric or other non-rigid material with no enclosing framework.

Bench Sign: A sign on an outdoor bench.

Blimp: An inflatable device 36 inches or greater in its greatest dimension and anchored by some means to a structure or the ground.

Changing Image Sign: A sign designed to accommodate routine changes of copy, images, or patterns of lights. Such signs include, but are not limited to, electronic signs incorporating LED, LCD, plasma, or projected light displays, and mechanical or manual changeable-copy signs.

Drive-Through Sign: A sign located adjacent to the driveway leading to a drive-through window and not legible from the public right-of-way. Such signs typically display menus or other information to drive-through customers.

Externally Illuminated Sign: A sign where the light source is separate from the sign and is directed so as to shine on the exterior of the sign.

Flag: A sign made of fabric or other similar non-rigid material, supported or anchored along only one edge or supported or anchored at only two corners.

Flashing Sign: A sign incorporating intermittent electrical impulses to a source of illumination or revolving in a manner which creates the illusion of flashing, or which changes colors or intensity of illumination more frequently than specified in Section 3.10.12.A.

Freestanding Sign: A sign wholly supported by a sign structure in the ground. Freestanding signs include, but are not limited to, monument signs, pole signs, A-frame signs, and lawn signs.

Illuminated Sign: A sign that incorporates light-emitting elements on or within the sign, or that is lit by external light sources directed at the sign.

Internally Illuminated Sign: A sign where the light source is contained within the sign and is directed so as to shine on the interior of the sign.

Lawn Sign: A temporary freestanding sign made of weather-resistant lightweight materials, that is supported by a frame, pole, or other support structure placed directly in the ground without foundation or other anchor.

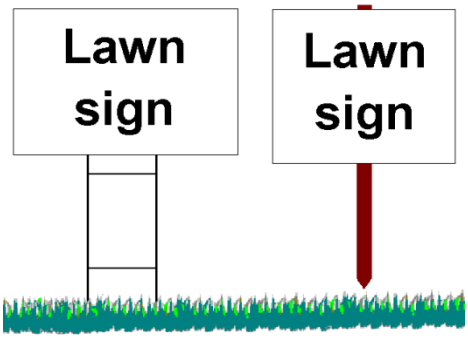


Figure 3.10G – Lawn Signs

Monument Sign: A freestanding sign that is placed on a solid base that extends a minimum of one foot above the ground and extends at least 75 percent of the length and width of the sign. The aboveground portion of the base is considered part of the total allowable height of a monument sign. A monument sign less than 8 feet high need not have a solid base.

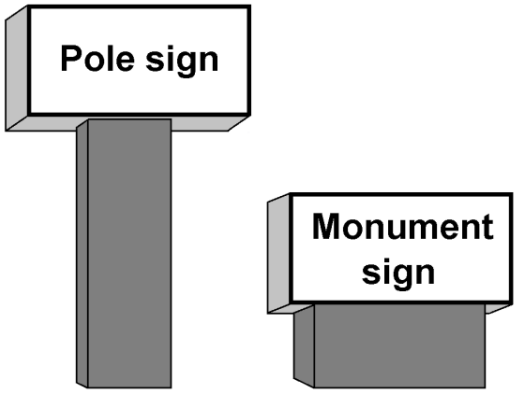


Figure 3.10H – Pole and Monument Signs

Moving Sign: A sign, EXCEPT a flag, balloon, or pennant, in which the display surface changes orientation or position. Moving signs include, but are not limited to, rotating signs, pinwheels, wind socks, and blimps.

Nonconforming Sign: A sign lawfully established prior to the adoption of current standards or a sign lawfully established on property annexed to the City, which does not conform to the current sign standards.

Pennant: A lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in a series, designed to move in the wind.

Permanent Sign: Any sign other than a temporary sign.

Pole Sign: A freestanding sign which exceeds eight feet in height.

Portable Sign: A sign that is not affixed to a structure or the ground in a permanent manner and that may be moved easily from place to place.

Projecting Sign: A sign, other than a wall sign, that projects from, and is supported by, a roof or wall of a building or structure and is generally at right angles to the building.

Roof sign: Any sign erected upon, or extending above or over, the eave or roof of any building or structure. A sign erected upon a roof which does not vary more than 20 degrees from vertical shall be regulated as a wall sign.

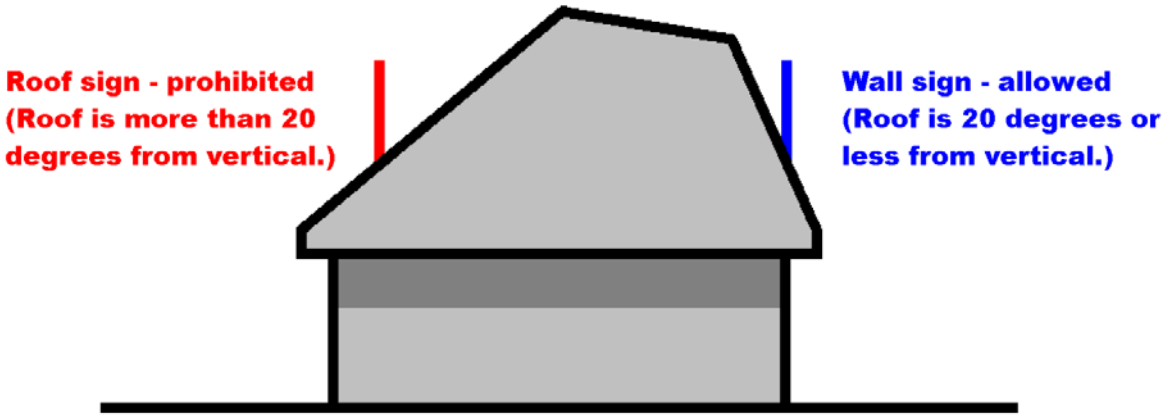


Figure 3.10I – Roof and Wall Signs

Subdivision Sign: A sign located on land in a recorded subdivision containing four lots or more.

Suspended Sign: A sign suspended from the underside of a canopy, awning, arcade, marquee, or other roofed open structure and oriented to pedestrian traffic.

Temporary Sign: A sign that is not permanently affixed or attached to a building, structure, or the ground. Temporary signs include, but are not limited to, A-frames, banners, flags, pennants, balloons, streamers, lawn signs, and portable signs.

Unsafe sign: A sign constituting a hazard to safety or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, disaster, damage, abandonment or inability to meet lateral or vertical loads, as determined by the City of Woodburn Building Official.

Wall Sign: Any sign attached to, or erected against, the wall of a building or structure, or attached to, or erected against, a roof which does not vary more than 20 degrees from vertical, with the exposed face of the sign in a plane parallel to the plane of the wall or roof, and which does not project more than 18 inches from the wall or roof.

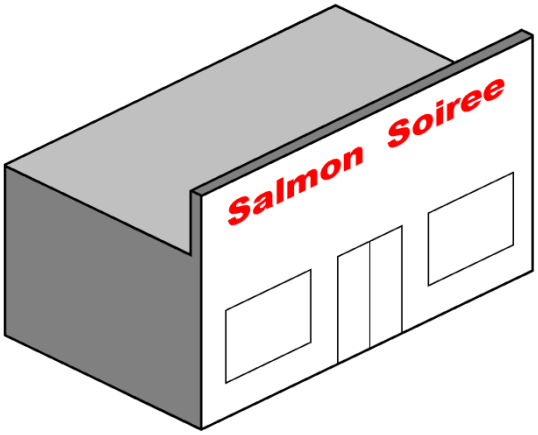


Figure 3.10J – Wall Sign on a Parapet

Window Sign: A sign that is placed inside a building (such as placement on a windowsill), within six inches of a window, or attached to the inside of a window.

Sign Maintenance: Normal care needed to keep a sign functional, such as painting, cleaning, oiling, and changing light bulbs. Maintenance does not include an alteration to the sign.

Sign Repair: Fixing or replacement of broken or worn parts. Replacement includes comparable materials only. Repairs may be made with the sign in position or with the sign removed.

Sign Structure: The structure, supports, uprights, braces, framework and display surfaces of a sign.

Single-tenant Site: A development that is not a complex.

Structural Alteration: Modification of a sign or sign structure that affects size, shape, height, or sign location; changes in structural materials; or replacement of electrical components with other than comparable materials. The replacement of wood parts with metal parts, the replacement of incandescent bulbs with light emitting diodes (LED), or the addition of electronic elements to a non-electrified sign are examples of structural alterations. Structural alteration does not include

ordinary maintenance or repair, repainting an existing sign surface, including changes of message or image, exchanging painted, pasted or glued materials on painted wall signs, or exchanging display panels of a sign through release and closing of clips or other brackets.

3.10.05 Sign Permit Required

A. A sign permit is required to erect, replace, construct, relocate, or alter a sign, unless such sign is exempt under Section 3.10.07. To initiate consideration of a sign permit, a complete City application, accompanying information, and a filing fee must be submitted to the Director. The Director shall issue a sign permit if the applicant demonstrates compliance with all provisions of Section 3.10.

B. Sign maintenance, sign repair and the changing of a sign display surface is allowed without obtaining a sign permit, so long as structural alterations are not made and the sign display surface is not altered in shape or size.

C. If a building permit is required to erect the sign, the sign permit approval shall expire at the same time the building permit expires. If a building permit is not required to erect the sign, the sign permit approval shall expire 180 days from the date of approval, unless substantial construction of the sign has occurred.

3.10.06 General Requirements

A. Location: No portion of a freestanding sign shall be located less than five feet from any boundary property line or in the special setback area established by Section 3.03.02.

B. Sign Maintenance: Signs and sign structures together with their supports, braces, guys, anchors and electrical components must be maintained in a proper state of repair. The Director may order the removal of any sign or sign structure that is not maintained. Signs and sign structures that are dangerous must be taken down and removed or made safe, as the Director deems necessary.

C. Signs shall be constructed of weather-resistant material, such as combinations of metal, plastic, natural wood, and glass. Plywood, oriented strand board (OSB) and fiberboard are not considered weather-resistant materials. Paper products such as construction paper, poster board, and cardboard are not considered weather-resistant materials and are not allowed. Vinyl and cloth materials may be used only for temporary signs and awnings.

D. Each sign should be designed to be consistent with the architectural style of the main building or buildings on the site. Signs should be designed to incorporate at least one of the predominately visual elements of the building, such as type of construction materials or color. The use of fluorescent colors or highly reflective materials is prohibited.

E. Supporting elements of pole signs shall be covered, consistent with subsection (D) above. The total width of pole covers shall be at least 30 percent of the sign display width.

F. Freestanding signs shall appear to be a single unit and shall not have separate or detached cabinets or display surfaces that are not architecturally integrated into the primary display surface.

3.10.07 Signs Exempt From Permit Requirements

The following are exempt from application and permit requirements of this Section, but are subject to other applicable portions of this Section and the City Code and may require building and electrical permits:

A. Signs that are inside a building, except window signs, or signs that do not have a primary purpose of being legible from a public street or another property. Such signs include, but are not limited to, scoreboard signs, signs on the inside of ball field fences, signs within a stadium, and signs located within the site of a special event, such as a festival or carnival.

B. Signs required by federal, state, or City law on private property, except signs regulated by ORS 646.930 (Motor vehicle fuel prices; requirements for display), if the sign is no more than six square feet in area. Such signs include building addresses, handicap parking signs, designation of fire lanes, public hearing notices, and directional signs.

C. Signs owned and maintained by federal or state agencies or by the City of Woodburn.

D. Signs lawfully erected in the public right-of-way in accordance with applicable state and local laws and regulations, including public utility signs, traffic signs and traffic control devices.

3.10.08 Prohibited Signs

The following signs and advertising devices are prohibited:

A. A sign located on the roof of any building or structure

B. A sign in public rights-of-way except awning, projecting, wall, and suspended signs projecting over a public right-of-way in conformity with Section 3.10, unless specifically allowed under Section 3.10.01 or exempt under Section 3.10.05

C. Internally illuminated awning sign

D. A permanent sign located on an undeveloped lot or parcel, except subdivision signs

E. A beacon light, searchlight, strobe light or a sign containing such lights

F. Neon tubing on the exterior of a building

G. A sign that imitates or resembles official traffic lights, signs or signals, or a sign that interferes with the effectiveness of any official traffic light, sign or signal

H. An illuminated sign that produces glare

I. A sign requiring a sign permit, but for which no sign permit has been issued

J. A sign with visible incandescent bulbs or fluorescent tubes or a sign with a visible direct source of illumination, except neon, light-emitting diodes, or plasma displays, and not otherwise allowed under Section 3.10.10 or exempt under Section 3.10.07

K. An unsafe sign or a sign that constitutes a public nuisance

L. A sign that incorporates flames or emits sounds or odors

M. A sign supported in whole or in part by cables or guy wires, or that has cables or guy wires

extending to or from it

N. Blimps

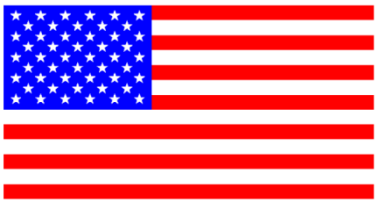
O. Signs attached to utility poles or boxes, except those attached by the utility

P. Flashing signs

Q. Moving signs

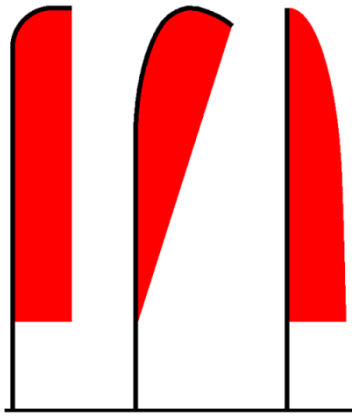
R. Changing image temporary signs

S. Flags with an aspect ratio (hoist to fly, or height to width) greater than 1:1



0.6:1 (allowed)

1:1 (allowed)



5.5:1 (prohibited)

Figure 3.10K – Aspect Ratio of Flags

3.10.09 Temporary Signs

A. Certain temporary signs that are not otherwise exempt under Section 3.10.07 may be approved for a limited period of time as a means of drawing attention to special events such as grand openings, carnivals, charitable events, seasonable openings, special promotions, etc. Approval of a Temporary Sign Permit application shall be required prior to placement of such signs.

B. The Director shall approve an application for a Temporary Sign Permit only if it complies with the following approval criteria:

1. The following types of temporary signs are permitted with a Temporary Sign Permit: A-frames, banners, flags, pennants, balloons, strings of lights, streamers, and lawn signs. Temporary sign types not specified above, including other types of portable signs and blimps, are not permitted with a Temporary Sign Permit.

2. An owner or tenant of an individual property, a tenant in a complex, and the owner of a complex may obtain Temporary Sign Permits.

3. No temporary sign shall obstruct on-site pedestrian or vehicular access or circulation.

4. Temporary Sign Permits shall be limited to a specified number of 15-day periods per calendar year. Said periods may run consecutively; however, unused days from one period shall not be added to another period. The number of Temporary Sign Permits

and maximum sign area shall be as follows:

Temporary Signs in the RM and P/SP Zones Table 3.10.09A					
Use	**Type**	**Time**	**Maximum Number**	**Maximum total sign area (square feet)**	**Maximum height (feet)**
Any use	Lawn or A-frame	45 days before a public election or the time the election is called, whichever is earlier, until seven days after the election	6	24 No individual sign may exceed six square feet in area	• Lawn: 7 • A-frame: 3
		All other times of the year	2	8	• Lawn: 7 • A-frame: 3
	Decorations and lights relating to federal, state, or City recognized events, seasons, or holidays	45 days before the holiday or event, until 15 days after the holiday or event	Unlimited	Unlimited	Unlimited
		Exempt from application and permit requirements			
Flags and window signs are listed with permanent signs, Table 3.10.10A.					

Temporary Signs in the RS and R1S Zones Table 3.10.09B					
Use	**Type**	**Time**	**Maximum Number**	**Maximum total sign area (square feet)**	**Maximum height (feet)**
Any use	Lawn or A-frame	45 days before a public election or the time the election is called, whichever is earlier, until seven days after the election	6	24 No individual sign may exceed six square feet in area	• Lawn: 7 • A-frame: 3
		All other times of the year	2	8	• Lawn: 7 • A-frame: 3
	Decorations and lights relating to federal, state, or City recognized events, seasons, or holidays	45 days before the holiday or event, until 15 days after the holiday or event	Unlimited	Unlimited	Unlimited
		Exempt from application and permit requirements			

Temporary Signs in the RS and R1S Zones Table 3.10.09B
1. Flags and window signs are listed with permanent signs, Table 3.10.10A. 2. Lawn signs and A-frame signs in the RS or R1S zone may be located in the public right-of-way provided that: a. The signs shall be established by the property owner or property owner's agent; b. No sign may be established in the right-of-way of a Major Arterial street; c. Signs shall not be placed in vision clearance areas (Section 3.03.06) or in adjacent rights-of-way; d. Signs shall not be on or overhanging a travel or on-street parking lane; e. Signs shall not be on or overhanging a sidewalk; and f. No portion of a sign shall be less than three feet from the back of a curb.

Temporary Signs in Commercial and Industrial Zones
Table 3.10.09C

Use	Type	Maximum Number	Maximum total sign area (square feet)	Maximum height (feet)	15-day periods
Single-tenant nonresidential site	All except A-frame	Unlimited	200	Lawn: 7	4
	A-frame	• 1 in the DDC zone • 2 in all other zones	8	3	Unlimited [1]
Individual tenant in a nonresidential complex	All except A-frame	Unlimited	100	Lawn: 7	4 [2]
	A-frame	• 1 in the DDC zone • 2 in all other zones	8	3	Unlimited [1]
Nonresidential complex with less than 20 tenant spaces	All except A-frame	Unlimited	200	Lawn: 7	4
	A-frame	Not allowed			
Nonresidential complex with 20 or more tenant spaces	All except A-frame	Unlimited	400	Lawn: 7	6
	A-frame	Not allowed			

Temporary Signs in Commercial and Industrial Zones Table 3.10.09C					
Use	**Type**	**Maximum Number**	**Maximum total sign area (square feet)**	**Maximum height (feet)**	**15-day periods**
Any use	Decorations and lights relating to federal, state, or City recognized events, seasons, or holidays	Unlimited	Unlimited	Unlimited	45 days before the holiday or event, until 15 days after the holiday or event
		Exempt from application and permit requirements			

a. A-frame signs in the DDC zone shall conform to the following standards.
   a. The sign may be located on private property or in the public right-of-way.
   b. The sign shall not exceed three feet in width, three feet in height, and nine square feet in area.
   c. The sign shall be at least one foot from the curb so as to not interfere with on-street parking,
   d. A minimum access width of four feet shall be maintained along all sidewalks and building entrances accessible to the public. Signs should be placed either next to the building or at the curbside by a street tree, bench, or other public amenity so as to not block on-street parking.
   e. The sign permit shall be revocable in case of noncompliance.
   f. The sign shall not be placed in a vision clearance area (Section 3.03.06) or in adjacent rights-of-way.
   g. The sign shall be utilized only during business hours and shall be removed during non-business hours.
   h. The sign shall not be illuminated.
   i. The sign owner shall assume all liability for incidents involving the sign by signing a document exempting the City from liability.

b. Temporary signs for an individual tenant in a complex, except A-frame signs, shall be limited to banners and flags on the exterior walls and windows of the individual tenant space.

c. Flags and window signs are listed with permanent signs, Tables 3.10.10B-E.

3.10.10 Permanent Sign Allowances

Permanent signs shall not exceed the number, size, or height specified in the following tables, and shall comply with the other regulations noted in the following tables.

Permanent Signs in RS, RSN, R1S, RM, RMN, and P/SP Zones Table 3.10.10A	
Monument Signs	
Use	**Allowance**
Non-residential use, less than 3 acres	• Maximum 1 • Maximum 8 feet high • Maximum 20 square feet
Non-residential use, 3 acres or more	• Maximum 1 per street frontage • Maximum 2 signs • Maximum 8 feet high • Maximum 32 square feet each
Multiple-family dwellings	• Maximum 1 • Maximum 8 feet high • Maximum 20 square feet
Subdivision with more than 4 lots or mobile home park with more than 4 spaces	• Maximum 1 on each side of the entrance from a public street • Maximum 2 monument or wall signs total per public street entrance • Maximum 8 feet high • Maximum 20 square feet each
Wall Signs	
Use	**Allowance**
Non-residential use, less than 3 acres	• Maximum 1 • Maximum 20 square feet
Non-residential use, 3 acres or more	• Maximum 1 per wall facing a public street • Maximum 2 signs • Maximum 32 square feet each
Single-family dwellings	• Maximum 2 • Maximum 3 square feet total • Exempt from application and permit requirements
Multiple-family dwellings	• Maximum 1 • Maximum 20 square feet • Allowed by permit
	• Maximum 2 • Maximum 3 square feet total • Exempt from application and permit requirements

Permanent Signs in RS, RSN, R1S, RM, RMN, and P/SP Zones Table 3.10.10A	
Subdivision with more than 4 lots or mobile home park with more than 4 spaces	• Maximum 1 on each side of the entrance from a public street • Maximum 2 monument or wall signs total per public street entrance • Maximum 20 square feet each • Allowed on freestanding walls only
Flags	
Individual dwelling units in multiple-family dwellings	• Maximum 1 per dwelling unit • Maximum 16 square feet • Must be attached to the dwelling unit • Exempt from application and permit requirements
All other uses, including multiple-family dwellings	• Maximum 3 • Maximum 40 square feet each • Maximum 40 feet high • Exempt from application and permit requirements
Window Signs	
• Maximum 50 percent of window area on each facade • Exempt from application and permit requirements	
Bench Signs	
• Maximum 1 square foot per bench • Exempt from application and permit requirements	

1. Pole, awning, marquee, canopy, projecting, and suspended signs are not allowed.
2. Changing image is allowed on monument signs only, up to 65 percent of the sign area, for nonresidential uses only.
3. Externally illuminated signs are allowed. Internally illuminated signs are not allowed, except for changing-image signs.
4. A sign on a freestanding wall shall not project above the wall.
5. Non-residential complexes with two or more buildings and multiple-family residential complexes with four or more buildings are allowed one additional sign per street access. Such signs shall be located a minimum of 50 feet from the public right-of-way. Each sign shall be limited to a maximum area of 24 square feet. Freestanding signs shall be limited to a maximum height of eight feet. Such signs typically display a directory or map of the complex.

Permanent Signs in the CG Zone Table 3.10.10B		
Pole Signs [1]		
Frontage	**Freeway Overlay (See Figure 3.10L)**	**Elsewhere**
Less than 100 feet	Not allowed	Not allowed
100-299 feet	• Maximum 1 per single-tenant site or complex • Maximum 45 feet high • Maximum 200 square feet or 4.5 square feet per foot of actual height, whichever is less	• Maximum 1 per single-tenant site or complex • Maximum 20 feet high • Maximum 32 square feet (single tenant) • Maximum 50 square feet (complex)
300-599 feet	• Maximum 1 per single-tenant site or complex • Maximum 45 feet high • Maximum 200 square feet or 4.5 square feet per foot of actual height, whichever is less	• Maximum 1 per single-tenant site or complex • Maximum 20 feet high • Maximum 50 square feet (single tenant) • Maximum 75 square feet (complex)
600- 999 feet	• Maximum 1 per single-tenant site or complex • Maximum 45 feet high • Maximum 300 square feet or 6.7 square feet per foot of actual height, whichever is less	• Maximum 1 per single-tenant site or complex • Maximum 20 feet high • Maximum 100 square feet
1,000-1,199 feet	• Maximum 1 per single-tenant site or complex • Maximum 45 feet high • Maximum 550 square feet or 12.3 square feet per foot of actual height, whichever is less	
1,200 feet or more	• Maximum 1 per single-tenant site or complex • Maximum 45 feet high • Maximum 850 square feet or 18.9 square feet per foot of actual height, whichever is less	

Monument Signs [1]	
Frontage	**Allowance**

Permanent Signs in the CG Zone Table 3.10.10B	
1-299 feet	• Maximum 1 per frontage on the same street • Maximum 4 signs per single-tenant site or complex. • Maximum 8 feet high • Maximum 32 square feet each
300 feet or more	• Maximum 1 per single-tenant site or complex • Maximum 8 feet high • Maximum 100 square feet
Wall Signs	
• Minimum 20 square feet • Maximum 6 percent of facade or 200 square feet, whichever is less • Allowance increases by 50 percent if the wall is more than 200 feet from the public right-of-way	
Awning or Marquee Signs	
• Deemed wall signs • Shall not extend above or below the awning or marquee	
Canopy Signs	
• Maximum 2 sides of canopy • Maximum 15 percent of canopy face or 50 square feet, whichever is less	
Projecting Signs	
• Not allowed on a site or complex with a pole or monument sign • Maximum 1 per single-tenant site or complex • Minimum 8 feet above ground • Maximum 24 square feet • Maximum 6 foot projection	
Suspended Signs	
• Maximum 1 at each entrance to a building or tenant space • Shall not project past the outer edge of the roof structure • Minimum 8 feet above ground • Maximum 6 square feet	
Drive-through Signs	
• Maximum 2 • Maximum 8 feet high • Maximum 8 feet wide	

Flags
• Maximum 2 • Maximum 40 square feet each

Permanent Signs in the CG Zone Table 3.10.10B
• Maximum 40 feet high • Exempt from application and permit requirements
Window Signs
• Maximum 50 percent of window area on each facade • Exempt from application and permit requirements
Signs on Phone Booths and Product Dispensers
• Maximum 3 square feet on an individual unit • Exempt from application and permit requirements
Bench Signs
• Maximum 1 square foot per bench • Exempt from application and permit requirements
1. A monument sign may not be established on the same frontage as a pole sign. 2. Changing image is allowed on freestanding signs only, up to 50 percent of the total sign area. 3. Externally or internally illuminated signs – except internally illuminated awnings – are allowed. 4. For signs regulated by ORS 646.930 (Motor vehicle fuel prices; requirements for display), an additional 32 square feet may be incorporated into another sign, or may be installed as a separate wall or monument sign. The fuel price display area of such signs may be electronic changing-image. If the price of four or more fuel products is required to be displayed, the additional allowance shall be 42 square feet.

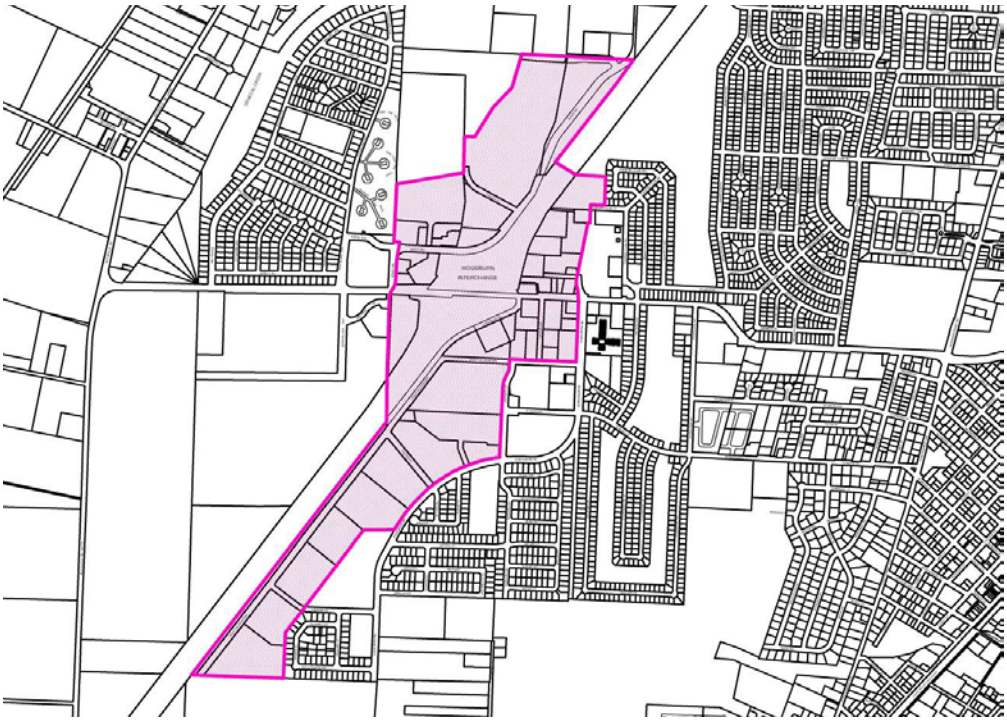


Figure 3.10L – Freeway Overlay

Permanent Signs in the CO Zone Table 3.10.10C
Monument Signs
• Maximum 1 per street frontage, 2 total • Maximum 8 feet high • Maximum 32 square feet each
Wall Signs
• Maximum 1 per tenant plus 1 to identify each building or complex • Maximum 4 percent of facade area
Drive-through Signs
• Maximum 2 • Maximum 8 feet high • Maximum 8 feet wide
Flags
• Maximum 2 • Maximum 40 square feet each • Maximum 40 feet high • Exempt from application and permit requirements

Permanent Signs in the CO Zone Table 3.10.10C
Window Signs
• Maximum 50 percent of window area on each facade • Exempt from application and permit requirements
Signs on Phone Booths and Product Dispensers
• Maximum 3 square feet on an individual unit • Exempt from application and permit requirements
Bench Signs
• Maximum 1 square foot per bench • Exempt from application and permit requirements
1. Pole, awning, marquee, canopy, projecting, and suspended signs, and changing-image signs are not allowed. 2. Externally or internally illuminated signs are allowed.

Permanent Signs in the DDC, MUV and NNC Zones Table 3.10.10D
Monument Signs
• Maximum 1 per single-tenant site or complex • Maximum 8 feet high • Maximum 20 square feet
Wall Signs
• Minimum 16 square feet • Maximum 4 percent of facade or 50 square feet, whichever is less
Drive-through Signs
• Maximum 2 • Maximum 8 feet high • Maximum 8 feet wide
Awning/Marquee Signs
• Deemed wall signs • Shall not extend above or below the awning or marquee
Projecting Signs
• Not allowed on a frontage with a monument sign • Maximum 1 per single-tenant site or complex • Minimum 8 feet above ground • Maximum 12 square feet • Maximum 4 foot projection

Permanent Signs in the DDC, MUV and NNC Zones Table 3.10.10D
Suspended Signs
• Only at entrance to a building or tenant space • Minimum 8 feet above ground • Maximum 6 square feet • Shall not project past the outer edge of the roof structure
Flags
• Maximum 2 • Maximum 40 square feet each • Maximum 40 feet high • Exempt from application and permit requirements
Window Signs
• Maximum 50 percent of window area on each facade • Exempt from application and permit requirements
Signs on Phone Booths and Product Dispensers
• Maximum 3 square feet on an individual unit • Exempt from application and permit requirements
Bench Signs
• Maximum 1 square foot per bench • Exempt from application and permit requirements
1. Pole and canopy signs are not allowed. 2. Externally or internally illuminated signs – except internally illuminated awnings – are allowed. 3. Changing image is allowed on monument signs only, up to 50 percent of the total sign area. 4. For signs regulated by ORS 646.930 (Motor vehicle fuel prices; requirements for display), an additional 32 square feet may be incorporated into another sign or may be installed as a separate wall or monument sign. The fuel price display area of such signs may be electronic changing-image. If the price of four or more fuel products is required to be displayed, the additional allowance shall be 42 square feet.

Permanent Signs in the IP, IL, and SWIR Zones Table 3.10.10E	
Monument Signs	
• Less than 300 feet of frontage	• Maximum 1 per single-tenant site or complex • Maximum 32 square feet • Maximum 8 feet high
• 300 feet or more of frontage	• Maximum 1 per single-tenant site or complex • Maximum 1 additional if a complex has 2 street frontages over 300 feet each • Maximum 50 square feet each • Maximum 8 feet high
Wall Signs	
• Minimum 16 square feet • Maximum 4 percent of facade or 150 square feet, whichever is less	
Awning/Marquee Signs	
• Deemed wall signs • Shall not extend above or below the awning or marquee	
Projecting Signs	
• Not allowed on a site with a monument sign • Maximum 1 per single-tenant site or complex • Minimum 8 feet above ground • Maximum 20 square feet • Maximum 4 foot projection	
Suspended Signs	
• Only at entrance to a building or tenant space • Minimum 8 feet above ground • Maximum 6 square feet • Shall not project past the outer edge of the roof structure	
Flags	
• Maximum 2 • Maximum 40 square feet each • Maximum 40 feet high • Exempt from application and permit requirements	
Window Signs	
• Maximum 50 percent of window area on each facade • Exempt from application and permit requirements	

Permanent Signs in the IP, IL, and SWIR Zones Table 3.10.10E
Signs on Phone Booths and Product Dispensers
• Maximum 3 square feet on an individual unit • Exempt from application and permit requirements
Bench Signs
• Maximum 1 square foot per bench • Exempt from application and permit requirements
1. Pole and canopy signs are not allowed. 2. At least 100 feet of separation is required between monument signs in the same complex. 3. Externally or internally illuminated signs – except internally illuminated awnings – are allowed. 4. Changing image is allowed on monument signs only, up to 50 percent of the total sign area. 5. For signs regulated by ORS 646.930 (Motor vehicle fuel prices; requirements for display), an additional 32 square feet may be incorporated into another sign or may be installed as a separate wall or monument sign. The fuel price display area of such signs may be electronic changing-image. If the price of four or more fuel products is required to be displayed, the additional allowance shall be 42 square feet.

3.10.11 Nonconforming Signs

A. Nonconforming signs may remain, provided they comply with the provisions of this Section.

B. Nonconforming permanent signs shall comply with the provisions of Section 3.10 when one or more of the following occurs:

1. A nonconforming sign is expanded, relocated, replaced or structurally altered. A nonconforming sign may be reduced in area or height without losing nonconforming status.

2. The use of the premises upon which the sign is located terminates for a continuous period of 180 days or more. In a complex, if an individual tenant space is vacant for a continuous period of 180 days or more, only signs attached to such tenant space shall be required to comply with the provisions of Section 3.10.

3. The use of the premises upon which the sign is located changes. In a complex, if the use of an individual tenant space changes, only signs attached to such tenant space shall be required to comply with the provisions of Section 3.10.

4. A Conditional Use or Type III Design Review land use application is approved for the premises upon which the sign is located. In a complex, if an individual tenant space is the subject of a Conditional Use or Type III Design Review land use application, only signs attached to such tenant space shall be required to comply with the provisions of Section 3.10.

5. A nonconforming sign is damaged, destroyed, or deteriorated by any means where the cost of repairs exceeds 50 percent of its current replacement cost as determined by the Building Official.

C. A nonconforming sign or sign structure may be removed for no more than 60 days to perform sign maintenance or sign repair. A nonconforming sign or sign structure removed for more than 60 days shall comply with the provisions of Section 3.10.

D. Mandatory Removal of Nonconforming Signs. All nonconforming signs shall be brought into compliance with Section 3.10 by July 1, 2023, except that:

1. Nonconforming signs that are within 10% of both the area (total and per sign) and the height allowed under Section 3.10 and the sign otherwise conforms to Section 3.10 shall not be subject to the compliance period. However, once a nonconforming sign is removed as described in this Section, any replacement sign must comply in all respects to Section 3.10.

2. Nonconforming sign on property annexed into the City after January 1, 2023 shall comply with Section 3.10 within two years of the property's annexation.

3.10.12 Electronic Changing Image Signs

A. Electronic changing image signs shall change from one display to another display in a transition time of not more than two seconds. The display shall thereafter remain static for at least the following intervals:

1. RS, R1S, RM, and P/SP zones: 20 seconds.

2. DDC, CO, CG not in Freeway Overlay, IP, IL, and SWIR zones: eight seconds.

3. CG zone in Freeway Overlay: four seconds.

B. No portion of an electronic changing image sign shall be brighter than as follows:

1. During daylight hours from sunrise to sunset, luminance shall be no greater than 3,000 candelas per square meter.

2. At all other times, luminance shall be no greater than 500 candelas per square meter.

C. All electronic changing image signs shall be equipped with an automatic dimming feature that accounts for ambient light levels.

4.01 Decision-Making Procedures

This Section provides the review and decision-making procedures by which all applications relating to the use of land authorized by ORS Chapters 92, 197 and 227 are reviewed and decided, as well as legislative enactments initiated by the City Council.

4.01.01 Application and Appeal Fees and Refunds
4.01.02 Assignment of Decision-Makers
4.01.03 Initiation of Applications
4.01.04 Completeness Review
4.01.05 120-Day Rule
4.01.06 Conditions of Approval
4.01.07 Consolidated Applications
4.01.08 Ex-Parte Contacts, Personal Site Observations, Conflicts of Interest and Bias
4.01.09 Initiation of a Legislative Proposal
4.01.10 Legislative Hearing Process
4.01.11 Notice of Decision
4.01.12 Objections to Procedure
4.01.13 Pre-application Conference
4.01.14 Public Notices
4.01.15 Quasi-Judicial Hearing Process
4.01.16 Requests of Continuance and to Keep the Record Open
4.01.17 Types of Decisions

4.01.01 Application and Appeal Fees and Refunds

A. Fees: The City may adopt by ordinance or resolution, and revise from time to time, a schedule of fees for applications, appeals and other services provided by City departments. Fees shall be based upon the City's actual or average cost of processing the application or conducting the appeal process, except where limited by State statute.

B. Payment: All fees shall be due and payable at the time the application or appeal is submitted. No application or appeal shall be accepted without the proper fee being paid.

C. Refunds: Fees will only be refunded as provided in this subsection:

1. When a fee is paid for an application, which is later found by the Director to not be required, the Director shall refund the fee.

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

3. In the event an applicant withdraws an application, the Director shall:

   a. Refund 100 percent of application fee prior to deeming the application complete; or

   b. Refund 50 percent prior to making the public notice; or

   c. Make no refund after completing the public notice.

4.01.02 Assignment of Decision-Makers:

The following City entity or official shall decide the following types of decisions:

A. Type I Decisions (Administrative): The Director shall render all Type I decisions. The Director's decision is the City's final decision on a Type I application and this decision is not appealable by any party through the City's land use process.

B. Type II Decisions (Quasi-Administrative): The Director shall render the City's decision on all Type II applications, which are appealable to the City Council. The City Council may call up a Type II decision for review on its own motion. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

C. Type III Decisions (Quasi-Judicial): The Planning Commission shall render all Type III decisions EXCEPT for Type III design review, with or without a concurrent variance, which shall be decided by the Design Review Board, if one has been created by the City Council. A Type III decision is appealable to the City Council. The City Council may call up a Type III decision for review on its own motion. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

D. Type IV Decisions (Quasi-Judicial): The Planning Commission shall hold an initial public hearing on all Type IV permit applications before making a recommendation to the City Council. The City Council shall then conduct a *de novo* public hearing. The City Council's decision is the City's final decision on a Type IV application and is appealable to LUBA within 21 days after it becomes final.

E. Type V Decisions (Legislative): Type V decisions involve legislative actions where the City Council enacts or amends the City's land use regulations, comprehensive plan, Official Zoning Map or some component of these documents. Type V decisions may only be initiated by the City Council. The Planning Commission holds an initial public hearing on the proposal before making a recommendation to the City Council. The City Council then holds a final public hearing and renders a decision. Public notice is provided for all public hearings (Section 4.01.14). The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

4.01.03 Initiation of Applications

A. The City Council may initiate any type of land use action by motion designating the appropriate City department to complete and file the application.

B. An application for a land use action may only be initiated by the record property owner or contract purchaser, the City Council or Planning Commission. If there is more than one record owner, then the City will not accept an application without signed authorization from all record owners.

4.01.04 Completeness Review

A. It is the responsibility of the applicant to demonstrate that all applicable criteria are satisfied. Within 30 days of the date the application is first submitted, the Director may require additional information to ensure all applicable approval criteria are addressed. In any event,

the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The City will not deem the application complete until all information required by the Director is submitted and received, or the applicant requests in writing that the application be deemed complete.

B. Within thirty days of receipt of the application, the Director shall review the application and all information submitted with it and evaluate whether the application is complete. If the application is incomplete, the Director shall notify the applicant in writing what information is missing.

   1. Upon receipt of a letter from the Director indicating the application is incomplete, the applicant has 180 days within which to submit the missing information. If the applicant submits the requested information within the 180-day period, the Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure prescribed in this Section.

   2. If an incomplete application is not made complete within 180 days from the date it was first filed it shall become void on the 181st day. If an application becomes void under this subsection, the Director shall return all materials and refund the application fee as outlined above (Section 4.01.01) to the applicant.

C. An application shall be deemed complete:

   1. When the Director, within 30 days after the filing date, determines the application is complete; or

   2. On the 31st day after filing if the applicant refuses in writing to submit the missing information; or

   3. On the date that the applicant files the missing information if a notice of incompleteness was given; or

   4. On the 31st day for any application not previously deemed complete if no incompleteness notice was given.

D. The approval standards which control the City's review and decision on a complete application are those which were in effect on the date the application was first submitted.

4.01.05 120-Day Rule

A. The City shall take final action on the application within 120 days of the date that the application was deemed complete, unless the applicant extends the 120 day period. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day period.

B. When the 120-day Rule is Not Applicable: The 120-day rule does not apply to:

   1. Any Type I decision;

   2. Any application for an amendment to the City's comprehensive plan; or

   3. Any application for a permit, the approval of which depends upon a Comprehensive Plan amendment;

4. Any application that is not wholly within the City's authority and control;
5. Any Type V decision, or
6. Any annexation.

4.01.06 Conditions of Approval

A. All City decision-making bodies have the authority to impose conditions of approval reasonably related to impacts caused by the development or designed to ensure that all applicable approval standards are, or can be, met on Type II, III and IV decisions except annexation. All conditions of approval shall be clear and objective or if the condition requires discretion shall provide for a subsequent opportunity for a public hearing.

B. Compliance with Conditions:

1. The applicant shall agree in writing that the applicant and successors shall be bound by the conditions prescribed for approval of the development.
2. Failure to comply with any condition of approval shall be the basis for revocation of the permit(s) and/or instituting code enforcement proceedings pursuant to the Section 4.02.10 and 4.02.11 and ORS 30.315.

4.01.07 Consolidated Applications

An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

4.01.08 Ex-Parte Contacts, Personal Site Observations, Conflicts of Interest and Bias

A. Declaration: Before the beginning of each hearing item, the chair shall ask the members of that decision-making body if there are any declarations of any *ex-parte* contacts, personal site observations, conflicts of interest, or bias.

B. *Ex- parte* Contacts: Before rendering a decision, a member of the decision-making body may not communicate, directly or indirectly, with any person interested in the outcome. Should such communication occur, at the beginning of the hearing the member must:

1. Enter into the record the substance of the written or oral communication; and
2. Publicly announce the content of the communication and provide any person with an opportunity to rebut the substance of the contact.

This rule does not apply to legislative proceedings or to communications between City staff and a member of the decision-making body.

C. Personal Site Observations: A member of the decision-making body shall disclose into the record any personal site observations, and provide any person with an opportunity to rebut

the substance of this disclosure. This rule does not apply to legislative proceedings.

D. Conflicts of Interest: A member of the decision-making body shall review and observe the requirements of the Government Standards and Practices Law. All potential and actual conflicts of interest shall be publicly disclosed by the member and noted in the meeting minutes. A member shall not participate as a member of the decision-making body in any land use proceeding where the member has an actual conflict of interest.

E. Bias: All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. A member of the decision-making body who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberations or decision on the matter. This rule does not apply to legislative proceedings.

4.01.09 Initiation of a Legislative Proposal

A. The City Council may initiate the consideration of a legislative decision by resolution.

B. Actions initiated by the Council shall be referred to the Planning Commission for a public hearing and recommendation to the Council.

C. The City Council shall hold the final public hearing on a proposed legislative decision.

4.01.10 Legislative Hearing Process

A. Purpose: Legislative actions involve the adoption or amendment of the City's land use regulations, comprehensive plan, Official Zoning Map, or some component of these documents.

B. Planning Commission Recommendation:

1. The Planning Commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or before the hearing. The Director shall notify the Oregon Department of Land Conservation and Development (DLCD) at least 35 days before the first hearing, or as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.

2. Once the Planning Commission hearing has been scheduled and noticed, the Director shall prepare and make available a report on the legislative proposal at least seven days before the hearing.

3. At the conclusion of the hearing, the Planning Commission shall adopt a recommendation on the proposal to the City Council. The Planning Commission shall make a report and recommendation to the City Council on all legislative proposals. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the City Council a report and recommendation to that effect.

C. City Council Action: Upon receiving a recommendation from the Planning Commission on a legislative action, the City Council shall hold at least one public hearing on the proposal.

Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the City Council may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby enact or amend the City's land use regulations, comprehensive plan, Official Zoning Map or some component of any of these documents, the City Council decision shall be enacted as an ordinance.

D. Notice of Final Decision to DLCD: Not later than five working days following the City Council's final decision, the Director shall mail notice of the decision to DLCD in accordance with ORS Chapter 197.

4.01.11 Notice of Decision

The City shall send, by mail, a notice of all Type II, III and IV decisions to all persons with standing, including the applicant, all persons who appeared either orally or in writing before the close of the public record and any persons who requested notice of the decision. The notice of decision shall include the following information:

A. The file number and date of decision;

B. The name of the applicant, owner and appellant (if different);

C. The street address or other easily understood location of the subject property;

D. A brief summary of the decision, and if an approval, a description of the permit approved;

E. A statement that the decision is final unless appealed and description of the requirements for perfecting an appeal; and

F. The contact person, address and a telephone number whereby a copy of the final decision may be inspected or copies obtained.

4.01.12 Objections to Procedure

Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex-parte contacts, must make a procedural objection before the City renders a final decision. Procedural objections may be raised at any time before a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

4.01.13 Pre-application Conference

A. Applicability: Prior to submitting an application, the applicant may schedule a pre-application conference with City staff to discuss the proposal before submitting an application of any land use action. A pre-application conference is advisory in nature and shall be voluntary, excepting annexations, where a pre-application conference is mandatory.

B. Purpose: The purpose of a pre-application conference is to provide staff from all affected

City departments the opportunity to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Director shall provide a written summary of the pre-application conference.

C. Requirements for a Pre-application Conference: To schedule a pre-application conference, a complete City application, accompanying information, and filing fee must be submitted to the Director.

D. No Waiver of Requirements: Notwithstanding any representations by City staff at a pre-application conference, staff is not authorized to waive any requirements of the Woodburn Development Ordinance and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.

4.01.14 Public Notices

All public notices issued by the City for decisions shall comply with the requirements of this Section.

A. Mailed Notice.

1. Type II: After the Director has deemed a Type II application complete, the Director shall issue a decision. The City shall send notice of the decision, by mail, to all record owners of property within 250 feet of the subject property, and to any City recognized neighborhood associations whose territory includes the subject property. The City's notice of decision shall include the following information:

    a. An explanation of the nature of the application and the proposed use or uses, which could be authorized;

    b. Street address or other easily understood location of the subject property;

    c. The name and telephone number of the planning staff person assigned to the application or who is otherwise available to answer questions about the application;

    d. A statement that the application and all supporting materials may be inspected at no cost, and copies may be obtained at reasonable cost, at City Hall during normal business hours;

    e. A statement that the decision will not become final until the period for filing an appeal to the City Council has expired and that the decision cannot be appealed directly to the Land Use Board of Appeals; and

    f. An explanation of appeal rights, including that any person who is adversely affected or aggrieved or who is entitled to written notice of the decision may appeal the decision.

2. Type III or IV: Notice for all initial public hearings concerning Type III and IV decisions shall conform to the requirements of this subsection. At least 10 days before the initial public hearing, the Director shall prepare and send, by mail, notice of the hearing to all record owners of property within 250 feet of the subject property and to

any City-recognized neighborhood association whose territory includes the subject property. If an application would change the zone of property that includes any part of a mobile home or manufactured dwelling park, notice shall also be mailed to the tenants at least 20 days before but not more than 40 days before the initial public hearing. Notice of the application hearing shall include the following information:

a. The time, date and location of the public hearing;

b. The street address or other easily understood location of the subject property and city-assigned planning file number;

c. A description of the applicant's proposal, along with a list of citations of the approval criteria that the City will use to evaluate the proposal;

d. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or before the hearing, and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;

e. A statement that any issue which is intended to provide a basis for an appeal to the City Council must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the City and all parties to respond to those issues;

f. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge and that copies may be obtained at reasonable cost at City Hall during normal business hours;

g. The name and telephone number of the Planning staff person responsible for the application or who is otherwise available to answer questions about the application; and

h. A statement advising that ADA access may be accommodated, upon receipt of a timely request.

B. Posted Notice: Notice of an initial public hearing for a Type III or IV decision shall be posted on the subject property as follows:

1. The applicant shall post on the site at least one (1) notice signboard provided by the Director for that purpose. The signboard shall be posted in a conspicuous place visible to the public on or in the vicinity of the property subject to the application. The signboard shall state with minimum two (2) inch high letters the case file number and the telephone number where City staff can be contacted for more information.

2. The applicant shall post a notice on each frontage of the subject property. If the property's frontage exceeds 600 feet, one copy of the notice shall be posted for each 600 feet or fraction thereof. Notices shall be posted within ten feet of the street and shall be visible to pedestrians and motorists.

3. The notice shall be posted at least 10 days prior to a public hearing. Once posted, the applicant need not maintain a posted notice. The applicant, upon posting shall certify that the property has been properly posted.

4. The applicant shall remove all signs within ten days following the event announced in

the notice.

C. Published Notice: The Director shall publish a notice of a Type IV or V public hearing as described in this subsection, unless otherwise specified by statute. The notice shall be published in a newspaper of general circulation within the City at least 7 days prior to the hearing. Such notice shall consist of:

1. The time, date and location of the public hearing;
2. The address or other easily understood location of the subject property;
3. A City-assigned planning file number;
4. A summary of the principal features of the application or legislative proposal;
5. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or before the hearing;
6. The name and telephone number of the Planning staff person responsible for the proposal;
7. A statement advising that ADA access may be accommodated, upon receipt of a timely request; and
8. Any other information required by statute.

D. Notice to Affected Agencies and Neighborhood Associations:

1. At least 10 days before the initial public hearing (Type III or IV) notice must be sent to any City-recognized neighborhood association whose territory includes the subject property.
2. At least 20 days before an initial public hearing (Type III & IV) or decision (Type II) for applications requiring submittal of a Transportation Impact Analysis notification shall be provided to the affected transportation facility and service providers (City, County, and State).
3. At least 20 days before an initial public hearing for a legislative decision (Type V) notice shall be sent to affected governmental entities (special districts, County, and State).
4. At least 20 days before an initial public hearing for a legislative decision (Type V) to any affected recognized neighborhood associations and any party who has requested in writing shall receive such notice.

4.01.15 Quasi-Judicial Hearing Process

A. Applicable Procedures: All public hearings pertaining to Type III and IV permits, whether before the Planning Commission, Design Review Board, or City Council**,** and any appeal or review for a Type II, III or IV permit, shall comply with the procedures of this Section. In addition, all public hearings shall comply with the Oregon Public Meetings Law, the applicable provisions of ORS 197.763 and any other applicable law.

B. Scheduling: Once the Director determines that an application for a Type III or IV decision is complete, the Director shall schedule a hearing before the Planning Commission or

Design Review Board, as applicable. If the Director has doubt about which type of procedure is applicable to a particular application, the application shall be processed pursuant to the procedure that provides the greater opportunity for public review. Once the Director determines that an appeal of a Type II or Type III decision has been properly filed, or that the City Council has called the decision up for review, the Director shall schedule a hearing before the City Council.

C. Public Hearing Notice: Notice of the hearing shall be issued as provided by this Ordinance.

D. Staff Report: The Director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant City department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, concludes whether each of the approval criteria are met and makes a recommendation to approve, approve with conditions, or deny the application.

E. Conduct of Quasi-Judicial Hearings: At the beginning of the public hearing at which any quasi-judicial application or appeal is reviewed, a statement shall be made to those in attendance that states that:

1. The applicable substantive criteria;
2. The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;
3. All testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be identified and discussed on the record. The decision-maker may reasonably limit oral presentations in length or content depending upon time constraints and to content that is relevant to applicable approval criteria. Any party may submit written materials while the public record is open;
4. Failure to raise an issue on the record accompanied by statements or evidence sufficient to afford the City and all parties an opportunity to respond to the issue, will preclude appeal on that issue to LUBA;
5. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision maker to respond to the issue precludes an action for damages in Circuit Court; and
6. Any party wanting a continuance or to keep open the record must make that request while the record is still open.

4.01.16 Requests of Continuance and to Keep the Record Open

A. The decision-maker may continue the hearing from time to time, to allow the submission of additional information or for deliberation without additional information. Similarly, the decision-maker may close the hearing, but keep the record open for the submission of additional written material or other documents and exhibits.

B. Before the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence. The decision-maker shall grant the request by either continuing the hearing or allowing the record to remain open for at least seven days.

1. If the decision-maker grants a continuance:

    a. The hearing shall be continued to a date, time and place at least seven days from the date of the initial evidentiary hearing.

    b. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony.

    c. If new written evidence is submitted at the continued hearing, any person may request, before conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

2. If the decision-maker holding the hearing leaves the record open:

    a. The record shall be left open for at least seven days for additional written evidence, arguments or testimony.

    b. If new evidence is submitted during the period the record was left open, any participant may file a written request for an opportunity to respond to the new evidence and the decision-maker shall reopen the record.

3. If the decision-maker reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

4. Any continuance or extension of the record granted shall be subject to the limitations of the 120-day rule. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day period.

5. Unless waived by the applicant, the decision-maker shall allow the applicant at least seven days after the record is closed to allow other parties to submit final written arguments, but not new evidence, in support of application.

C. The decision-maker may limit the factual and legal issues that may be addressed in any continued hearing or open record period.

D. The City Council may call up a Planning Commission or Director's decision for review, and shall consider;

1. The Planning Commission or Director's decision.

2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence on all applicable criteria.

3. The City Council may limit the issues that it will allow.

4. The rights of participants to continuances or open records, applicable to the initial public hearing, do not apply.

E. If the decision is appealed, the City Council shall consider:

1. The Planning Commission or Director's decision.

2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence on all applicable criteria.
3. The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal.
4. The rights of participants to continuances or open record persons applicable to initial public hearings do not apply.

4.01.17 Types of Decisions

A. Type I Decisions (Administrative): Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. Because no discretion is involved, Type I decisions do not qualify as a land use, or limited land use decision. The decision-making process requires no notice to any party other than the applicant. The Director's decision is final and is not appealable by any party through the City land use process.

B. Type II Decisions (Quasi-Administrative): Type II decisions involve the exercise of limited interpretation or exercise of policy or legislative judgment in evaluating approval criteria. The Director's decision is appealable to the City Council with notice to the Planning Commission, by any party with standing (i.e., applicant and any person who was mailed a notice of decision). The City Council then conducts a *de novo* public hearing. The City Council decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

C. Type III Decisions (Quasi-Judicial): Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners within 250 feet of the subject property.

D. Type IV Decisions (Quasi-Judicial): Type IV decisions involve the greatest amount of discretion and evaluation of subjective approval standards and are directed at a closely circumscribed factual circumstance or relatively small number of persons. Type IV decisions must be heard by the City Council before a final decision can be rendered. Included are small scale annexations, comprehensive plan map amendments, and Official Zoning Map amendments. The process for these land use decisions is controlled by ORS 197.763.

E. Type V Legislative Decisions (Legislative): Type V decisions involve legislative actions where the City Council enacts or amends the City's land use regulations, comprehensive plan, Official Zoning Map or some other component of any of these documents where changes are such a size, diversity of ownership or interest as to be legislative in nature under State law. Large-scale annexations are included, as well as adopting or amending the Comprehensive Plan or the Woodburn Development Ordinance. The Planning Commission holds an initial public hearing on the proposal prior to making a recommendation to the City Council. The City Council then holds a final *de novo* public hearing and makes the City's

final decision. Public notice is provided for all public hearings. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

4.02 Review, Interpretation and Enforcement

4.02.01	Appeals of Type II and III Decisions
4.02.02	Call-Up Review by the City Council: Type II and III Decisions
4.02.03	Enforcement
4.02.04	Expiration of a Development Decision
4.02.05	Extension of a Development Decision
4.02.06	Interpretation
4.02.07	Modification of Conditions
4.02.08	Performance Guarantees
4.02.09	Reapplication Limits
4.02.10	Revocation or Modification of a Previously Approved Permit
4.02.11	Transfer of Approval Right

4.02.01 Appeals of Type II and III Decisions

Appeals of any final decisions by the City must comply with the requirements of this Section.

A. Standing to Appeal: The following rules prescribe who has the standing to appeal:

1. Type I (Administrative): Type I decisions by the Director are not appealable to any other decision-maker within the City.
2. Type II (Quasi-Administrative): For Type II decisions, only those persons who are adversely affected or aggrieved or who are entitled to notice have standing to appeal a Director's decision to the City Council.
3. Type III (Quasi-judicial): For Type III decisions, only those persons who participated either orally or in writing, or who are adversely affected or aggrieved have standing to appeal the decision of the Planning Commission or Design Review Board to the City Council.
4. Type IV (Quasi-Judicial): Type IV decisions are appealable to the Land Use Board of Appeals.

B. Notice of Intent to Appeal:

1. A notice of intent to appeal any Type II or Type III decision must be received in writing by the Director within twelve (12) days from the date notice of the decision is mailed to those entitled to notice. Late filing of any appeal shall be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.
2. The following must be included as part of the notice of appeal:
   a. The Department's file number and date the decision to be appealed was rendered;
   b. The name, mailing address and daytime telephone number for each appellant;
   c. A statement of how each appellant has standing to appeal;
   d. A statement of the grounds for the appeal; and
   e. The appropriate appeal fee. Failure to include the appeal fee for the costs of appeal

and transcript fee within the appeal period is a jurisdictional defect and will result in an automatic rejection. If an appellant prevails at hearing or on appeal, the transcript fee shall be refunded.

C. Notice of the Appeal Hearing: The Director shall issue notice of the appeal hearing to all parties who signed in or participated, either orally or in writing, before the close of the public record. Notice of the appeal hearing shall contain the following information:

1. The file number and date of the decision being appealed;
2. The time, date and location of the public hearing;
3. The name of the applicant, owner and appellant (if different);
4. The street address or other easily understood location of the subject property;
5. A description of the permit requested and the applicant's development proposal;
6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;
7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal; and
8. A general explanation of the requirements for participation and the City's hearing procedures.

4.02.02 Call-Up Review by the City Council: Type II and III Decisions

A. Authority: Whether or not an appeal is filed, the City Council may, by majority vote, initiate a review of a Type II or III decision.

B. Procedures:

1. A summary of all Type II and III decisions shall be forwarded to the City Council as an information item by the Director at the time the decision is mailed to the applicant.
2. Review under this Section shall be initiated before the adjournment of the first regular City Council meeting, following the date the City Council receives notification of the decision.
3. Review shall replace a filed appeal of the decision. The appellants of any appeal filed before a City Council call for review, shall receive a full refund of the filing fee.
4. The City Recorder will set the hearing date for the City Council review, considering the 120-day rule.
5. The notice, hearing and decision procedures for a City Council review shall follow the provisions of the Woodburn Development Ordinance provided for appeals.

4.02.03 Enforcement

A. Inspection and Right of Entry: When necessary to investigate a suspected violation of the Woodburn Development Ordinance, or an application for or revocation of any permit issued

under this ordinance, the Director may enter on any site or into any structure open to the public for the purpose of investigation, provided entry is done in accordance with law. Without a search warrant, no site or structure that is closed to the public shall be entered without the consent of the owner or occupant.

B. Abatement: Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to the Woodburn Development Ordinance is unlawful and a public nuisance, and may be abated.

C. Civil Proceeding Initiated by City Attorney: The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the City to enforce the provisions of the Woodburn Development Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or set aside any use or structure established, operated, erected, moved, altered, enlarged, painted or maintained contrary to the Woodburn Development Ordinance, including revocation of all permits, to prevent, enjoin, abate or remove the unlawful location, construction, maintenance, repair, alteration or use.

D. Civil Infraction: In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of the Woodburn Development Ordinance constitutes a Class 1 Civil Infraction. Each violation is a separate infraction. Each violation of the Woodburn Development Ordinance constitutes a separate Civil Infraction, and each day that a violation of the WDO is committed or permitted to continue shall constitute a separate Civil Infraction.

E. Remedies – Cumulative: The remedies provided for in this Section are cumulative and not mutually exclusive.

4.02.04 Expiration of a Development Decision

A. Decisions that Do Not Expire: A final decision on a change to the comprehensive plan, the Official Zoning Map, land use regulations or some component of these documents shall be permanent.

B. Expiration Period: A final decision on any application shall expire within three years of the date of the final decision unless:

1. A building permit to exercise the right granted by the decision has been issued;
2. The activity approved in the decision has commenced; or
3. A time extension, Section 4.02.05, has been approved.

C. New Application Required: Expiration of a final decision shall require a new application for any use or development on the subject property that is not otherwise allowed outright.

D. Deferral of the Expiration Period Due to Appeals: If a final decision is appealed to a review body beyond the jurisdiction of the City, the expiration period for the decision shall not begin until review before LUBA and the appellate courts has been completed, including any remand proceedings before the City. The expiration period provided for in this Section will begin to run on the date of final disposition of the appeal.

4.02.05 Extension of a Development Decision

The effective time period of a final decision may be extended for up to two years by the Director, subject to a Type II application. The request shall be approved unless significant changes have occurred to this ordinance or the use is no longer allowed as originally approved. In making a decision to grant the extension, the Director shall consider if there is a need to modify the decision or conditions of approval to meet standards in affect at the time of the extension request.

4.02.06 Interpretation

A. Interpretations, Generally

1. An ambiguous term in the Woodburn Development Ordinance may be interpreted in the final decision of any Type II, III or IV application or by a request for a formal interpretation by the City Council. A request for a formal interpretation may be initiated by the Director when, in the administration of the Code, the Director deems it appropriate that a question as to the intent of the Woodburn Development Ordinance be formally rather than administratively resolved. Alternatively, any person, upon application, may request a formal interpretation.
2. The purpose of a formal interpretation is to clarify the intent of the Woodburn Development Ordinance and its application in particular circumstances. The Council shall not, by interpretation, vary or modify any clear and unambiguous provisions of this ordinance. Formal interpretations shall be processed as a Type IV application.
3. Formal interpretations made by the Council shall control future administration and enforcement of the Woodburn Development Ordinance until vacated or superseded by Council or incorporated as an amendment of the Woodburn Development Ordinance.
4. The Director shall keep a log of all formal interpretations.

B. Interpretation and Application of Code Language

1. The terms or words used in this Code shall be interpreted as follows where the context demands: words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; the word “shall” is mandatory and not discretionary; the word “may” is permissive; the term “should” is discretionary, the masculine gender includes the feminine and neuter; the term “this Code” shall be deemed to include the text of this Code, the accompanying Official Zoning Map and all amendments made hereafter to either; the term “standard” indicates a mandatory requirement; the term “guideline” indicates a norm that is accepted in the community but which is not a mandatory requirement.
2. The Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this Code. The City Council shall have the final authority to interpret all terms, provisions and requirements of this Code.
3. The Code shall be read literally. Regulations are not more or less strict than as stated.
4. Proposals for uses where the code is silent or where the rules of the Code do not provide a basis for concluding that the use is allowed, are prohibited.
5. Uses of land not expressly allowed or not incidental to a permitted or conditional use

are prohibited.

6. Where it is unclear whether or in what manner sections of this Code apply to a given situation, or if terms or sections are ambiguous or vague, the following should be applied as warranted under the circumstances:

   a. Terms defined in Section 1.02 (Definitions) have specifically stated meanings unless the context clearly requires otherwise.

   b. Terms not defined in Section 1.02 (Definitions) shall have the meaning set forth in the New Oxford American Dictionary, 2010 edition.

   c. This Code shall be interpreted reasonably, reading questioned regulations in relation to other sections such that an interpretation most fully effectuates the intent and purpose of the regulations.

7. This Code shall be interpreted most favorably to provide all necessary authority to carry out its purposes and provisions.

4.02.07 Modification of Conditions

Any request to modify a condition of approval is to be considered pursuant to the procedure and the standards and criteria applicable to a new application of the type of permit or zone change that is proposed to be amended, except that the modification of a condition limiting the use of property may only be considered as a Type IV Official Zoning Map Change application.

4.02.08 Performance Guarantees

A. When an applicant has an obligation to construct or improve public facilities or to construct improvements imposed as a condition of approval, the obligation shall be fulfilled prior to the issuance of a building permit unless the City Administrator has granted a written waiver of this requirement and the applicant has filed with the City Administrator a performance guarantee. The performance guarantee shall state the nature of the obligation, the time in which the obligation is to be met, identify the property subject to the obligation and contain security in a form acceptable to the City Administrator and in an amount equal to 120 percent of the cost of fulfilling the obligation as estimated by the City Administrator for the year in which fulfillment of the obligation is anticipated. A sufficient performance bond, cash deposit or a letter of credit are considered acceptable forms of security. Return of the security to the applicant shall be conditional upon the applicant fulfilling the obligation.

B. As an additional and separate part of the performance guarantee, the applicant shall agree to maintain the public facility or improvement for a period of one year following acceptance by the City Administrator, to include but not be limited to repair, replacement and all things necessary to ensure its operational integrity.

C. The security shall be forfeited to the City if the applicant does not fulfill the requirements stated in the performance guarantee and the City may use the security to complete the obligation or any part of it. Until the obligation is completed, the security shall remain in the custody of the City or shall be placed in an escrow account subject to City control.

D. Upon receipt of written notice to the City Administrator that the public facility or required improvement has been completed and is ready for final inspection and acceptance, the City Administrator shall, with ten calendar days, make such inspection. If the City Administrator finds the work to be acceptable, there shall promptly be issued a final certificate stating the work has been completed and accepted.

E. If the City Administrator determines that an applicant has failed to fulfill the obligation to complete the public facility or required improvement, written notice shall be given detailing the failure and stating the City's intention to use the security given to complete the obligation. If the City completes the obligation and the required security is not sufficient to compensate the City for costs incurred, the excess amount due to the City, plus a ten percent administrative charge, shall constitute a lien in favor of the City upon the real property subject to the obligation.

F. The lien attaches upon entry in the City lien docket and the giving of notice of the claim for the amount due for the completion of the obligation. The notice shall demand the amount due, allege the insufficiency of the bond or other security to compensate the City fully for the cost of the fulfillment of the obligation, and allege the applicant's failure to complete the required obligation.

G. Once docketed, the lien may be foreclosed in the manner prescribed by ORS Chapter 223 for foreclosing liens on real property.

4.02.09 Reapplication Limited

1. If the application is denied or withdrawn following the close of the public hearing, no reapplication for the same or substantially similar proposal may be made for one year following the date of the final decision.

2. This Section shall not apply to Conceptual Development Plans for Planned Unit Developments (Section 3.09.04).

4.02.10 Revocation or Modification of a Previously Approved Permit

A. Authority to Revoke or Modify: The Planning Commission may initiate a proceeding to revoke or modify a quasi-judicial permit if the Planning Commission determines there is a substantial likelihood that any of the following conditions exists:

   1. An applicant, or the applicant's successor in interest, fails to fully comply with one or more conditions of permit approval, or otherwise does not comply fully with the City's approval.

   2. An applicant, or the applicant's successor in interest, failed to complete the work within the time frame or in the manner approved without obtaining an extension of time or modification of the permit from the granting authority.

   3. The activities of the use, or the use itself, are substantially different or have substantially increased in intensity from what was approved.

   4. When the use is subject to the nonconforming use regulations, the applicant has not obtained approval, or has substantially changed the use or substantially increased the

intensity of the use after the use became nonconforming.

5. The applicant or the applicant's representatives either intentionally or unintentionally committed a material misrepresentation of fact in the application or the evidence submitted in support of the application.

6. For purposes of this Section, "material misrepresentation of fact" means a misstatement of factual information that:

   a. Was submitted by the applicant in support of the application;

   b. Could have been corrected by the applicant at the time of application; and

   c. Formed the sole basis for approval of the application pursuant to an applicable approval criterion.

7. A "material misrepresentation of fact" does not include misstatements of fact made by City staff or caused by failure of another party to appear or adequately testify.

B. Process for Revocation or Modification: Revocation or modification shall be processed as a Type IV decision. The Director shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the City's approval.

C. Possible Actions at the Revocation Hearing: Depending on the situation, the City may take any of the actions described below. If the decision is to modify the permit, the City may not approve a use that is more intense than originally approved, unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions or to be inconsistent with the City's approval may be subject to the following actions:

1. The City may find that the use or development is complying with the conditions of the approval. In this case, the permit shall not be altered.

2. The City may modify the permit if it finds that the use or development does not fully comply with the conditions of approval or otherwise does not comply with what was approved, that the violations are not substantial enough to warrant revocation and that the use can comply with the original approval criteria if certain conditions are met. In this case, the City may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions.

3. The City may revoke a permit if it finds there are substantial violations of conditions or failure to implement conditions of a permit, such that the original approval criteria for the use or development are not being met.

D. Effect of Revocation: In the event permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date that all appeals periods have been exhausted, unless the decision provides otherwise. In the event the City Council's decision on a revocation request is appealed, the revocation action shall be automatically stayed until the appeal is resolved.

4.02.11 Transfer of Approval Right

Any final decision granted under this ordinance shall run with the land and shall transfer with ownership of the land, unless otherwise specified in the decision. Any conditions, time limits or other restrictions imposed with a decision shall bind all subsequent owners of the subject property.

5.01 Type I (Administrative) Decisions

5.01 General Requirements

A. The purpose of this Section is to identify what types of actions are considered Type I decisions and their respective review criteria. Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. The decision-making process requires no notice to any party other than the applicant.

B. To initiate consideration of a Type I decision, a complete City application, accompanying information and a filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.

5.01.01	Access Permit to a City Street, excluding a Major or Minor Arterial Street
5.01.02	Design Review, Type I
5.01.03	Fence and Free Standing Wall
5.01.04	Grading Permit
5.01.05	Manufactured Dwelling Park, Final Plan Approval
5.01.06	Partition and Subdivision Final Plat Approval
5.01.07	Planned Unit Development (PUD), Final Plan & Design Plan Approval
5.01.08	Property Line Adjustment; Consolidation of Lots
5.01.09	Riparian Corridor and Wetlands Overlay District (RCWOD) Permit
5.01.10	Sign Permit
5.01.11	Significant Tree Removal Permit
5.01.12	Temporary Outdoor Marketing and Special Event Permit

5.01.01 Access Permit to a City Street, Excluding a Major or Minor Arterial Street

A. Purpose: The purpose of this review is to ensure conformance to City street access standards and this Ordinance (Section 3.04) in circumstances where the access is not subject to any other type of land use approval.

B. Criteria: The proposed access shall conform to the applicable standards of access to public streets (Section 3.04).

C. Procedure: The Director shall review the access permit and determine conformance to City standards.

5.01.02 Design Review, Type I

A. Purpose: The purpose of this review is to ensure all residential and non-residential buildings comply with the standards found in the Land Use and Development Guidelines and Standards (Sections 2.1 and 3.1) Sections of this Ordinance.

B. Applicability: The Type I Design Review is applicable to the following:

1. Residential Buildings

   a. Single family dwellings, manufactured dwellings, or duplexes in residential zones in an RS, R1S and RM zone, except where subject to an architectural design review process approved by the Planned Unit Development (PUD) (Section 3.09.02.E).

   b. Exterior alterations to single family, manufactured dwellings, duplexes and multi-family dwellings in an RS, R1S and RM zone; except where subject to an architectural design review process-approved by the Planned Unit Development (PUD) (Section 3.09.02.E) or when;

      The subject dwelling has a prior Type I design review approval; and

      The alteration is subject to building permit approval.

   c. Multi-family dwellings that comply with all standards found in the Land Use, Specified Use, and Development Guidelines and Standards (Sections 2.1, 2.2, and 3.1) of this Ordinance.

2. Non Residential Buildings

   a. New buildings 500 square feet or less in commercial zones or 1,000 square feet or less in industrial zones.

   b. Sites with existing buildings, expansions or new buildings that increase lot coverage by 10% or less.

   c. Change in use that increases required parking by 10% or less.

   d. Façade changes or structural changes requiring a building permit.

   e. Establishment of a use in a building vacant for 6 months or more.

C. Criteria: Applications are evaluated for compliance with the standards found in the Land Use, Specified Use, and Development Guidelines and Standards (Sections 2.1, 2.2, and 3.1) of this Ordinance.

D. Procedure: The Director shall review the application for compliance with the applicable standards of this Ordinance.

5.01.03 Fence and Free-Standing Wall

A. Purpose: The purpose of this review is to ensure that fences and free-standing walls comply with the locational and height standards found within the Specified Use Standards (Sections 2.201 and 2.202).

B. Criteria: Applications shall be reviewed for compliance with the locational and height standards of this Ordinance for fences and free-standing walls.

C. Procedure: The Director shall review the proposal fence and/or free-standing wall for compliance to City regulations.

5.01.04 Grading Permit

A. Purpose: The purpose of this review is to ensure that grading is in compliance with the Woodburn Storm Management Plan, Woodburn Flood Plain Ordinance, Public Works Department Construction Standards and Specifications, and the State Building Code.

B. Applicability: The requirement for a grading permit applies to any of the following activities:

1. Any fill, removal, or grading of land identified within the boundaries of the regulatory floodplain,
2. Any fill, removal, or grading of land identified within the Riparian Corridor and Wetlands Overlay District (RCWOD),
3. Any fill, removal, or grading of land that requires a permit from the Oregon Department of State Lands,
4. Any fill, removal, or grading of land area that equals or exceeds one acre, or
5. Any development activity required by the WDO to submit a grading plan or permit.

C. Criteria: Grading Permits shall be reviewed pursuant to the policies and standards of the Woodburn Storm Management Plan, Woodburn Flood Plain Ordinance, Public Works Construction Standards and Specifications and State Building Code, as applicable.

D. Procedure: The Director shall review the proposed grading plan to ensure compliance with City and State requirements.

5.01.05 Manufactured Dwelling Park, Final Plan Approval

A. Purpose: The purpose of this review is to ensure substantial conformance of the final plan and improvements with the conditions of the Manufactured Dwelling Park Preliminary Approval, including compliance with applicable Oregon Administrative Rules.

B. Criteria:

1. The final plan shall be submitted within two years of date of the initial approval.
2. The final plan shall include all information required by the preliminary approval and shall substantially conform to all conditions of the preliminary approval and applicable Oregon Administrative Rules.

C. Procedures: The Director shall determine whether the final plan substantially conforms to the preliminary approval, applicable State requirements, and City ordinances.

5.01.06 Partition and Subdivision Final Plat Approval

A. Purpose: The purpose of this review is to ensure that the final partition or subdivision plat and associated public improvements are in substantial conformance with the conditions of the preliminary partition or subdivision approval. The final plat shall be submitted within two years of date of the initial approval and be in substantial conforms to all conditions of the preliminary approval.

B. Criteria:

1. That all public facilities required by the preliminary approval are designed to City standards and either constructed and accepted by the City or covered by the performance guarantee (Section 4.02.08).
2. A change in the circulation pattern, including the location or configuration of street intersections;
3. An increase in the number of lots; or
4. Any other substantive change found by Director.
5. That the final plat is completes and accurate, surveyed and monumented in compliance with State statutes.

C. Procedure: Upon determination that the final partition or subdivision plat conforms to all standards and requirements, the Director shall sign the final plat.

1. If the Director determines that the final plat does not conform to the preliminary plat, the applicant shall be advised of the reasons for the decision. The applicant shall have 30 calendar days to correct the plat. The final plat shall be recorded with Marion County within 30 calendar days of the Director's signature.
2. Acceptance of the land dedicated to the public by means of a plat occurs upon the recording of the plat.
3. With the recording of the final plat, the City is authorized to issue building permits for the subject property.

5.01.07 Planned Unit Development (PUD), Final Plan Approval

A. Purpose: The purpose of this review is to ensure that the Final PUD Plan is in substantial conformance with the conditions of the PUD Detailed Development Plan approval.

B. Procedure:

1. The Director shall determine whether the Final PUD Plan conforms to the PUD Detailed Development Plan approval, including all conditions and other applicable State statutes and City ordinances.
2. The Director shall determine that all public facilities are designed to City standards and either constructed and accepted by the City or covered by the performance guarantee (Section 4.02.08).
3. The Director shall approve the Final PUD Plan if it is in substantial conformance with the requirements of this Section.
   a. The PUD, including the CC&R's, is in compliance with conditions of the initial PUD approval.
   b. The PUD final plat is complete and accurate and the property has been surveyed and monumented in compliance with State Statutes (ORS Chapter 92).
4. If the Director determines that the final plat does not conform, the applicant shall be advised by written notice. The applicant shall have 30 calendar days to correct the plat.

5. The final plat and the CC&R's shall be recorded with Marion County within 30 calendar days of signature. Acceptance by the City of the land dedicated to the public by means of a plat occurs upon the recording of the plat.

6. Building permits can be issued for the subject property upon recording of the final plat.

5.01.08 Property Line Adjustment; Consolidation of Lots

A. Purpose: The purpose of this review is to ensure that adjustments to property lines or the consolidation of existing lots and parcels, complies with the standards of this ordinance (Section 2.1), and State Statutes (ORS Chapters 92 and 209). Property line adjustments and consolidation of lots are allowed in all zones.

B. Criteria:

1. Lot area, depth, width, frontage, building setbacks, vehicular access and lot coverage comply with the standards of this ordinance (Sections 2 and 3);

2. Existing easements are accurately reflected;

3. Existing land use and development on the subject property comply with the requirements of prior land use actions; and

4. Buildings and structures abutting the adjusted property lines comply with State building codes and with respect to current occupancy.

5. Property line adjustments are surveyed and monumented to the requirements set forth in State statutes (ORS Chapters 92 and 209) and recorded by the County Surveyor.

C. Procedure: The Director shall review and approve the application when it is found that it meets this Ordinance and the State Building Codes.

5.01.09 Riparian Corridor and Wetlands Overlay District (RCWOD) Permit

A. Purpose: The purpose of this review procedure is to ensure that all grading, excavation, fill, and vegetation removal (other than perimeter mowing and other cutting necessary for hazard prevention) within a delineated, significant wetland, complies with applicable City and State standards and procedures, including those of ORS Chapter 196 and Chapter 227 and OAR 660-023.

B. Criteria:

1. The applicable standards of this Ordinance and the findings and action proposed by the Division of State Lands; or

2. A finding, verified by the Division of State Lands, of error in delineation of the RCWOD boundary.

C. Procedure: The Director shall review the permit and approve it upon a determination that it meets the criteria of this ordinance.

5.01.10 Sign Permit

A. Purpose: The purpose of this review is to ensure that signs comply with standards found within the Sign Standards (Section 3.10).

B. Criteria: Applications shall be reviewed for compliance with the sign standards of this Ordinance.

C. Procedure: The Director shall review proposal signs for compliance to City regulations.

5.01.11 Significant Tree Removal Permit

A. Purpose: The purpose of this review is to ensure that the removal of significant trees complies with the provisions of this Ordinance (Section 3.06.04).

B. Criteria: Applications shall be reviewed for compliance with this Ordinance.

C. Procedure: The Director shall review and approve the proposal for compliance of this Ordinance.

5.01.12 Temporary Outdoor Marketing and Special Event Permit

A. Purpose: The purpose of this review is to ensure that temporary outdoor marketing or special events conform to the standards of this Ordinance (Section 2.07.17).

B. Criteria: Temporary Outdoor Marketing and Special Events shall conform to all standards of this Ordinance.

C. Procedure: The Director shall review the application and shall approve a permit based on compliance with this Ordinance.

5.02 Type II (Quasi-Administrative) Decisions

5.02 General Requirements

A. The purpose of this Section is to identify what types of actions are considered Type II decisions. Type II Decisions involve the exercise of limited interpretation or exercise of policy or legislative judgment in evaluating approval criteria. The Director evaluates the request and issues a decision giving approval, approving with conditions, or denying the application. The Director's decision is appealable to the City Council with notice to the Planning Commission, by any party with standing (i.e., applicant and any person who was mailed a notice of decision). The City Council then conducts a public hearing. The City Council's decision is the City's final decision and is appealable to LUBA (Land Use Board of Appeals) within 21 days after it becomes final.

B. To initiate consideration of a Type II decision, a complete City application, accompanying information, and a filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.

5.02.01	Access Permit to a City Major or Minor Arterial Street
5.02.02	Architectural Standard Substitution
5.02.03	Design Review, Type II
5.02.04	Exception to Street Right of Way and Improvement Requirements
5.02.05	Partition, Preliminary Approval
5.02.06	Zoning Adjustment

5.02.01 Access Permit to a City Minor or Major Arterial Street

A. Purpose: The purpose of a Type II Access Permit is to ensure conformance to City street access standards and this Ordinance (Section 3.04) in circumstances where the access to a Minor or Major Arterial Street is not subject to any other type of land use approval.

B. Criteria: The application shall conform to the applicable standards and guidelines of this ordinance.

5.02.02 Architectural Standard Substitution

A. Purpose: The purpose of a Type II Architectural Substitution Permit is to allow substitution to the architectural standards found in this Ordinance (Section 3.07). Substituted materials or design need to meet the overall intent of this ordinance by providing for quality construction, reflect custom design, and result in equal or greater design quality. A maximum of three substitutions may be considered for each building covered by an application for substitute standards.

   Architectural standards set by statute (ORS 197.307 and 197.314) relating to roofs on manufactured dwellings are non-variable, and cannot be modified by a substitution.

B. Criteria: The suitability of the substitute architectural standards shall be based on

consideration of how each substitute standard:

1. Incorporates design elements and materials that reflect a custom design;
2. Incorporates materials, that in substance and visual appeal, are of equal or greater quality;
3. For residential development:
    a. Reflects the character of the existing housing within the subject subdivision and/or surrounding area within 250 feet of subject property;
    b. Ensures that needed housing is not discouraged through unreasonable cost, pursuant to ORS 197.307.

5.02.03 Design Review, Type II

A. Purpose: The purpose of Type II design review is to ensure that new buildings or additions to existing buildings comply with Land Use and Development Guidelines and Standards of this ordinance (Sections 2 and 3).

B. Applicability: Type II Design Review is required for the following:

1. Non-residential structures 1,000 square feet or less in the RS, R1S, RM, and P/SP zones.
2. Structures 2,000 square feet or less than in the CO, CG, DDC, and NNC zones.
3. Structures 3,000 square feet or less in the IP, IL, MUV and SWIR zones.
4. For sites with existing buildings in the CO, CG, MUV, DDC, NNC, IP, IL, and SWIR zones; expansions or new buildings that increase lot coverage by more than 10% but less than 25%.
5. Change of use that results in an increase in required parking of more than 10% but less than 25%.
6. Single family and duplexes in the NCOD zone, but excluding structures subject to Type I review.

5.02.04 Exception to Street Right of Way and Improvement Requirements

A. Purpose: The purpose of a Type II Street Exception is to allow deviation from the street standards required by this Ordinance (Section 3.01) for the functional classification of streets identified in the Woodburn Transportation System Plan. An exception for a development reviewed as a Type I or II application shall be considered as a Type II application, while development reviewed as a Type III application shall be considered a Type III application.

B. Criteria:

1. The estimated extent, on a quantitative basis, to which the rights-of-way and improvements will be used by persons served by the building or development, and whether the use is for safety or convenience;

2. The estimated level, on a quantitative basis, of rights-of-way and improvements needed to meet the estimated extent of use by persons served by the building or development;
3. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the rights-of-way and improvements will be a part;
4. The estimated level, on a quantitative basis, of rights-of-way and improvements needed to mitigate the estimated impact on the public infrastructure system.

C. Proportionate Reduction in Standards: An exception to reduce a street right-of-way or cross-section requirement below the functional classification standard may be approved when a lesser standard is justified, based on the nature and extent of the impacts of the proposed development. No exception may be granted from applicable construction specifications.

D. Minimum Standards: To ensure a safe and functional street with capacity to meet current demands and to ensure safety for vehicles, bicyclists and pedestrians, as well as other forms of non-vehicular traffic, there are minimum standards for rights-of-way and improvements that must be provided to meet the standards of this Ordinance (Section 3.01).

5.02.05 Partition, Preliminary Approval

A. Purpose: The purpose of this Type II review is to ensure that partitions - the dividing of a single lot into 3 or less lots within one calendar year - comply with this Ordinance, with the Land Use and Development Standards and Guidelines (Sections 2 and 3), and applicable Oregon State Statutes.

B. Criteria: Preliminary approval of a partition requires compliance with the following:

1. The preliminary partition complies with all applicable provisions of this ordinance.
2. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of any adjoining land.
3. The proposed partition is served with City streets, water, sewer and storm drainage facilities with adequate capacity.
4. That the partition takes into account topography, vegetation and other natural features of the site.
5. That adequate measures have been planned to alleviate identified hazards and limitations to development:
    a. For regulatory wetlands, these shall be the measures required by the Division of State Lands.
    b. For unstable areas, demonstration that streets and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected.

5.02.06 Zoning Adjustment

A. Purpose: The purpose of a Type II zoning adjustment is to allow minor variance to the development standards of this ordinance, where strict adherence to these standards is precluded by circumstances beyond the control of the applicant, and minor deviation from the standards will not unreasonably affect existing or potential uses on adjacent properties.

B. Criteria: A zoning adjustment involves the balancing of competing and conflicting interests. The following criteria will be considered in evaluating zoning adjustments.

1. The adjustment is necessary to prevent unnecessary hardship relating to the land or structure. Factors to consider in determining whether hardship exists, include:

   a. Physical circumstances over which the applicant has no control, related to the piece of property involved, that distinguish it from other land in the same zone, including but not limited to lot size, shape, and topography.

   b. Whether the property can be reasonably used similar to other properties in the same zone without the adjustment.

   c. Whether the hardship was created by the applicant requesting the adjustment.

2. The zoning adjustment will not be materially injurious to adjacent properties or to the use of the subject property. Factors to be considered in determining whether development is not materially injurious include, but are not limited to:

   a. Physical impacts such development will have because of the adjustment, such as visual, noise, traffic and drainage, erosion and landslide hazards.

   b. If the adjustment concerns joint-use parking, the hours of operation for vehicle parking shall not create a competing parking demand.

   c. Minimal impacts occur as a result of the proposed adjustment.

3. The adjustment is the minimum deviation from the standard necessary to make reasonable use of the property;

4. The adjustment does not conflict with the Woodburn Comprehensive Plan.

C. Maximum Adjustment permitted:

1. Lot Area: Up to a five percent reduction in the minimum lot area.

2. Lot Coverage: Up to an increase of five percent in lot coverage.

3. Front Yard Setback or Setback Abutting a Street: Up to a 10 percent reduction of a setback.

4. Side Yard Setback: Up to a 20 percent reduction in setback, but no less than a five foot setback in a RS or R1S zone or less than the requirements of the state building code, whichever is more restrictive.

5. Rear Yard Setback: Up to a 20 percent reduction in setback, but no less than a five foot setback, except in those zones permitting zero setbacks the minimum setback shall be either 5 feet or zero.

6. Lot Width: Up to a ten percent reduction.

7. Lot Depth: Up to a ten percent reduction.
8. Building/Fence Height: Up to a ten percent increase in height.
9. Parking Standards: Up to a five percent reduction in required parking spaces except no reduction in the number of handicapped vehicle parking spaces or in dimensional standards.
10. Joint-Use Vehicle Parking: Up to 20 percent of the required vehicle parking may be satisfied by joint use of the parking provided for another use.
11. Fences and Freestanding Walls: The location or height of a fence or free-standing wall, excluding the adjustment of any such facilities within a clear vision area.

D. Prohibited Adjustments:

1. Adjustments to the number of permitted dwellings and to the use of property shall be prohibited.
2. Standards established by Oregon Revised Statutes for manufactured dwellings and manufactured dwelling parks are non-variable.

5.03 Type III (Quasi-Judicial) Decisions

5.03 General Requirements

A. The purpose of this Section is to identify what types of actions are considered Type III decisions. Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners. The decision of the Planning Commission or Design Review Board is appealable to the City Council. The City Council's decision is the City's final decision and is appealable to the Land Use Board of Appeals.

B. To initiate consideration of a Type III decision, a complete City application, accompanying information, and filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.

5.03.01 Conditional Use
5.03.02 Design Review, Type III
5.03.03 Exception to Street Right of Way and Improvement Requirements
5.03.04 Manufactured Dwelling Park, Preliminary Approval
5.03.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit
5.03.06 Planned Unit Development (PUD), Preliminary Plan Approval
5.03.07 Planned Unit Development (PUD), Design Plan Final Approval
5.03.08 Special Conditional Use - Historically or Architecturally Significant Building
5.03.09 Special Use as a Conditional Use
5.03.10 Subdivision Preliminary Approval
5.03.11 Telecommunications Facility, Specific Conditional Use
5.03.12 Variance

5.03.01 Conditional Use

A. Purpose: A conditional use is an activity which is permitted in a zone but which, because of some characteristics, is not entirely compatible with other uses allowed in the zone, and cannot be permitted outright. A public hearing is held by the Planning Commission and conditions may be imposed to offset impacts and make the use as compatible as practical with surrounding uses. Conditions can also be imposed to make the use conform to the requirements of this Ordinance and with other applicable criteria and standards. Conditions that decrease the minimum standards of a development standard require variance approval.

B. Criteria:

1. The proposed use shall be permitted as a conditional use within the zoning district.
2. The proposed use shall comply with the development standards of the zoning district.

3. The proposed use shall be compatible with the surrounding properties.

   Relevant factors to be considered in determining whether the proposed use is compatible include:

   a. The suitability of the size, shape, location and topography of the site for the proposed use;

   b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;

   c. The impact of the proposed use on the quality of the living environment:

      1) Noise;

      2) Illumination;

      3) Hours of operation;

      4) Air quality;

      5) Aesthetics; and

      6) Vehicular traffic.

   d. The conformance of the proposed use with applicable Comprehensive Plan policies; and

   e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

5.03.02 Design Review, Type III

A. Purpose: The purpose of Type III design review is to ensure that new buildings or additions to existing buildings comply with Land Use and Development Guidelines and Standards of this Ordinance (Sections 2 and 3).

B. Type III Design Review is required for the following:

   1. Non-residential structures in residential zones greater than 1,000 square feet in the RS, R1S, RM, and P/SP zones.

   2. Multi-family dwellings not meeting all architectural design guidelines and standards.

   3. Structures greater than 2,000 square feet in the CO, CG, MUV, DDC, and NNC zones.

   4. Structures greater than 3,000 square feet in the IP, IL, and SWIR zones.

   5. For sites with existing buildings in the CO, CG, MUV, DDC, NNC, IP, IL, and SWIR zones; expansions or new buildings that increase lot coverage by more 25%.

   6. Change of use that results in a greater than 25% increase in required parking.

5.03.03 Exception to Street Right of Way and Improvement Requirements

A. Purpose: The purpose of a Type III Exception is to allow a deviation from the development standard required for the functional classification of the street identified in the

Transportation System Plan. Street exceptions are processed in conjunction with a development proposal that is a Type III application.

B. Criteria:

1. The estimated extent, on a quantitative basis, to which the rights of way and improvements will be used by persons served by the building or development, whether the use is for safety or convenience;
2. The estimated level, on a quantitative basis, of rights of way and improvements needed to meet the estimated extent of use by persons served by the building or development;
3. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the rights of way and improvements will be a part; and
4. The estimated level, on a quantitative basis, of rights of way and improvements needed to mitigate the estimated impact on the public infrastructure system.

C. Proportionate Reduction in Standards: An exception to reduce a street right of way or cross-section requirement below the functional classification standard may be approved when a lesser standard is justified based on the nature and extent of the impacts of the proposed development. No exception may be granted from applicable construction specifications.

D. Minimum Standards: To ensure a safe and functional street with capacity to meet current demands and to ensure safety for vehicles, bicyclists and pedestrians, as well as other forms of non-vehicular traffic, there are minimum standards for right of way and improvement that must be provided to meet the standards of this Ordinance (Section 3.01). Deviation from these minimum standards may only be considered by a variance procedure.

5.03.04 Manufactured Dwelling Park, Preliminary Approval

A. Purpose: The purpose of this review is to ensure that proposed Manufactured Dwelling Parks (MDP) comply with the standards of this ordinance (Sections 2 and 3) and all applicable state standards.

B. Criteria:

1. The proposed use shall be a special permitted use within the zoning district.
2. The proposed use shall comply with the applicable standards and criteria of this Ordinance (Sections 2 and 3).

5.03.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit

A. Purpose: The purpose of a Type III Phasing Permit is to allow phased construction of development while meeting the standards of this ordinance (Sections 2 and 3), while providing fully functional phases that develop in compliance with the tentative approval for the development.

B. Criteria: The proposed phasing of development shall:

1. Ensure that individual phases will be properly coordinated with each other and can be designed to meet City development standards; and
2. Ensure that the phases do not unreasonably impede future development of adjacent undeveloped properties;
3. Ensure that access, circulation, and public utilities are sized for future development of the remainder of the site and adjacent undeveloped sites.

5.03.06 Planned Unit Development (PUD), Conceptual Development Plan Approval

A. Purpose: The purpose of a Type III PUD Conceptual Development Plan Approval is to ensure that the proposed development complies with all provisions of this ordinance. The PUD process is intended to provide incentives for greater creativity and adaptability in development design, through a process that allows flexibility in the application of standards, while at the same time meeting the overall intent of this Ordinance (Sections 2 and 3). PUDs are governed by Section 3.109.

B. Criteria: Approval of a Conceptual Development Plan shall require compliance with the following:

1. That approval does not impede the future best use of the remainder of the property, or adversely affect the efficient development of any adjoining land or access thereto.
2. That the proposed development is served with City streets, water, sewer and storm drainage facilities with adequate capacity.
3. That the plan for the development takes into account topography, vegetation and other natural features of the site.
4. That adequate measures have been planned to alleviate identified hazards and limitations to development:
   a. For wetlands, these shall be the measures required by the Division of State Lands for regulatory wetlands.
   b. For unstable areas, these measures shall be documentation as approved by the Public Works Department, ensuring that streets and building sites are on geologically stable soil, considering stress and loads.
5. If phased, that the development of the subdivision is balanced with the need for urbanization within the Woodburn Urban Growth Boundary.
6. That the requested flexibility in development standards is justified by commensurate public benefits.
7. That the proposed PUD is compatible with surrounding developments and neighborhoods.
8. That the tentative plan complies with all applicable provisions of this ordinance.

5.03.07 Planned Unit Development (PUD), Detailed Development Plan Approval

A. Purpose: The purpose of this Type III review is to ensure that the Detailed Development Plan provides sufficient detail to ensure compliance with the standards of this ordinance (Sections 2 and 3) and that the design elements of development are consistent with the preliminary approval of the Conceptual Development Plan.

B. Criteria:

1. The Detailed Development Plan shall substantially conform to the approved Conceptual Development Plan, including conditions of approval.
2. The Detailed Development Plan shall refine and make specific the Conceptual Development Plan.
3. The Detailed Development Plan shall demonstrate that the requested flexibility in development standards is justified by commensurate public benefits.
4. The Detailed Development Plan shall demonstrate that the proposed PUD is compatible with surrounding developments and neighborhoods.

5.03.08 Special Conditional Use - Historically or Architecturally Significant Building

A. Purpose: The purpose of the Type III Special Conditional Use is to create a procedure that allows consideration of the adaptive reuse of historically or architecturally significant buildings in the RS and RM zones for more intensive use than permitted outright in the zone in order to conserve the site or building resource. The procedure is intended to provide appropriate opportunities for the maintenance and use of significant cultural resources, including those designated on the National Register of Historic Places, having award-winning design, or that are locally designated as a cultural resource, that would not otherwise be economically practical, and where a zone change would be inappropriate.

B. Criteria:

1. The proposed use shall be permitted as a conditional use within the zoning district.
2. The proposed use shall comply with the development standards of the zoning district.
3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:
   a. The suitability of the size, shape, location and topography of the site for the proposed use;
   b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
   c. The impact of the proposed use on the quality of the living environment, such as:
      1) Noise;
      2) Illumination;
      3) Hours of operation;
      4) Air quality;
      5) Aesthetics; and
      6) Vehicular traffic.
   d. The conformance of the proposed use with applicable Comprehensive Plan policies; and

e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

f. The proposed use shall be compatible with the surrounding properties.

4. The specific standards and criteria of this Ordinance (Section 2.08**)** shall be met.

5.03.09 Special Use as a Conditional Use

A. Purpose: The purpose of this Type III decision is to allow modification or elimination of specific development standards required for Special Uses listed in this Ordinance (Section 2.07). Modification or elimination of specific development standards are approved as a Conditional Use.

B. Criteria:

1. The proposed use shall be permitted as a Special Use within the zoning district.

2. The proposed use shall comply with the development standards of the zoning district.

3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:

a. The suitability of the size, shape, location and topography of the site for the proposed use;

b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;

c. The impact of the proposed use on the quality of the living environment, such as:

1) Noise;

2) Illumination;

3) Hours of operation;

4) Air quality;

5) Aesthetics; and

6) Vehicular traffic.

d. The conformance of the proposed use with applicable Comprehensive Plan policies; and

e. The suitability of appropriate standards of this Ordinance and other proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

5.03.10 Subdivision Preliminary Approval

A. Purpose: The purpose of a Type III Subdivision decision is to ensure that the division of properties into 4 or more lots complies with the standards of this Ordinance (Sections 2 and 3). Subdivisions are allowed in all zones, provided the proposal meets applicable standards.

B. Criteria: Preliminary approval of a Subdivision shall require compliance with the following:

1. That approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of the remainder of any adjoining land or access thereto.
2. That the proposed development shall be served with city streets, water, sewer and storm drainage facilities with adequate capacity.
3. That the plan for the development takes into account topography, vegetation and other natural features of the site.
4. That adequate measures have been planned to alleviate identified hazards and limitations to development:
   a. For wetlands these shall be the measures required by the Division of State Lands for regulatory wetlands.
   b. For unstable areas, demonstration that streets and building sites are on geologically stable soil considering the stress and loads.
5. The preliminary plat complies with all applicable provisions of this Ordinance (Sections 2 and 3), except where waived by variance.

5.03.11 Telecommunications Facility, Specific Conditional Use

A. Purpose: The purpose of this Type III review is to provide a procedure to consider the siting of telecommunication facilities subject to the standards of this Ordinance (Sections 2 and 3).

B. Criteria:

1. The proposed use shall be listed as an allowed conditional use within the zoning district.
2. The proposed use shall comply with the development standards of the zoning district.
3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:
   a. The suitability of the size, shape, location and topography of the site for the proposed use;
   b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
   c. The impact of the proposed use on the quality of the living environment:
      1) Noise;
      2) Illumination;
      3) Hours of operation;
      4) Air quality;
      5) Aesthetics; and
      6) Vehicular traffic.

4. The conformance of the proposed use with applicable Comprehensive Plan policies; and
5. The suitability of proposed conditions of approval to ensure adequate public facilities are available to serve the site and compatibility with other uses in the vicinity.
6. The specific standards and criteria this ordinance (Section 2.08.03) shall be met.

5.03.12 Variance

A. Purpose: The purpose of this Type III Variance is to allow use of a property in a way that would otherwise be prohibited by this Ordinance. Uses not allowed in a particular zone are not subject to the variance process. Standards set by statute relating to siting of manufactured homes on individual lots; siding and roof of manufactured homes; and manufactured home and dwelling park improvements are non-variable.

B. Criteria: A variance may be granted to allow a deviation from development standard of this ordinance where the following criteria are met:

1. Strict adherence to the standards of this ordinance is not possible or imposes an excessive burden on the property owner, and
2. Variance to the standards will not unreasonably impact existing or potential uses or development on the subject property or adjacent properties.

C. Factors to Consider: A determination of whether the criteria are satisfied involves balancing competing and conflicting interests. The factors that are listed below are not criteria and are not intended to be an exclusive list and are used as a guide in determining whether the criteria are met.

1. The variance is necessary to prevent unnecessary hardship relating to the land or structure, which would cause the property to be unbuildable by application of this Ordinance. Factors to consider in determining whether hardship exists, include:
   a. Physical circumstances over which the applicant has no control related to the piece of property involved that distinguish it from other land in the zone, including but not limited to, lot size, shape, and topography.
   b. Whether reasonable use similar to other properties can be made of the property without the variance.
   c. Whether the hardship was created by the person requesting the variance.
2. Development consistent with the request will not be materially injurious to adjacent properties. Factors to be considered in determining whether development consistent with the variance materially injurious include, but are not limited to:
   a. Physical impacts such development will have because of the variance, such as visual, noise, traffic and drainage, erosion and landslide hazards.
   b. Incremental impacts occurring as a result of the proposed variance.
3. Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms or parks will not be adversely affected because of the variance.
4. Whether the variance is the minimum deviation necessary to make reasonable economic

use of the property;

5. Whether the variance conflicts with the Woodburn Comprehensive Plan.

5.04 Type IV (Quasi-Judicial) Decisions

5.04 General Requirements

A. The purpose of this Section is to identify what types of actions are considered Type IV decisions. Type IV decisions involve the greatest amount of discretion and require evaluation of approval standards. These decisions are heard by the Planning Commission and City Council. The process for these land use decisions is controlled by ORS 197.763. Notice of the land use application and public hearing is published and mailed to the applicant, recognized neighborhood associations and property owners. The City Council decision is the City's final decision and is appealable to the Land Use Board of Appeals.

B. To initiate consideration of a Type IV decision, a complete City application, accompanying information, and filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.

5.04.01	Annexation
5.04.02	Comprehensive Plan Map Change, Owner Initiated
5.04.03	Formal Interpretation of the Woodburn Development Ordinance
5.04.04	Official Zoning Map Change, Owner Initiated

5.04.01 Annexation

A. Purpose: The purpose of this Type IV review is to provide a procedure to incorporate contiguous territory into the City in compliance with state requirements, Woodburn Comprehensive Plan, and Woodburn Development Ordinance.

B. Mandatory Pre-Application Conference: Prior to requesting annexation to the City, a Pre-Application Conference (Section 4.01.04) is required. This provides the city an opportunity to understand the proposed annexation and an opportunity to provide information on the likely impacts, limitations, requirements, approval standards, and other information that may affect the proposal.

C. Criteria:

1. Compliance with applicable Woodburn Comprehensive Plan goals and policies regarding annexation.
2. Territory to be annexed shall be contiguous to the City and shall either:
   a. Link to planned public facilities with adequate capacity to serve existing and future development of the property as indicated by the Woodburn Comprehensive Plan; or
   b. Guarantee that public facilities have adequate capacity to serve existing and future development of the property.
3. Annexations shall show a demonstrated community need for additional territory and development based on the following considerations:
   a. Lands designated for residential and community uses should demonstrate substantial conformance to the following:

1) The territory to be annexed should be contiguous to the City on two or more sides;

2) The territory to be annexed should not increase the inventory of buildable land designated on the Comprehensive Plan as Low or Medium Density Residential within the City to more than a 5-year supply;

3) The territory proposed for annexation should reflect the City's goals for directing growth by using public facility capacity that has been funded by the City's capital improvement program;

4) The site is feasible for development and provides either:

a) Completion or extension of the arterial/collector street pattern as depicted on the Woodburn Transportation System Plan; or

b) Connects existing stub streets, or other discontinuous streets, with another public street.

5) Annexed fulfills a substantial unmet community need, that has been identified by the City Council after a public hearing. Examples of community needs include park space and conservation of significant natural or historic resources.

b. Lands designated for commercial, industrial and other uses should demonstrate substantial conformance to the following criteria:

1) The proposed use of the territory to be annexed shall be for industrial or other uses providing employment opportunities;

2) The proposed industrial or commercial use of the territory does not require the expansion of infrastructure, additional service capacity, or incentives that are in excess of the costs normally borne by the community for development;

3) The proposed industrial or commercial use of the territory provides an economic opportunity for the City to diversify its economy.

D. Procedures:

1. An annexation may be initiated by petition based on the written consent of:

a. The owners of more than half of the territory proposed for annexation and more than half of the resident electors within the territory proposed to be annexed; or

b. One hundred percent of the owners and fifty percent of the electors within the territory proposed to be annexed; or

c. A lesser number of property owners.

2. If an annexation is initiated by property owners of less than half of property to be annexed, after holding a public hearing and if the City Council approves the proposed annexation, the City Council shall call for an election within the territory to be annexed. Otherwise no election on a proposed annexation is required.

3. The City may initiate annexation of an island (ORS 222.750), with or without the consent of the property owners or the resident electors. An island is an unincorporated territory surrounded by the boundaries of the City. Initiation of such an action is at the discretion of the City Council.

E. Zoning Designation for Annexed Property: All land annexed to the City shall be designated consistent with the Woodburn Comprehensive Plan, unless an application to re-designate the property is approved as part of the annexation process.

F. The timing of public improvements is as follows:

1. Street dedication is required upon annexation.
2. Dedication of public utility easements (PUE) is required upon annexation.
3. Street improvements are required upon development.
4. Connection to the sanitary sewer system is required upon development or septic failure.
5. Connection to the public water system is required upon development or well failure.
6. Connection to the public storm drain system is required upon development.

5.04.02 Comprehensive Plan Map Change, Owner Initiated

A. Purpose: The purpose of an Owner Initiated Comprehensive Map Change is to provide a process for the consideration of a change in use designation on the Woodburn Comprehensive Plan, initiated by the property owner.

B. Criteria: The applicant shall demonstrate the following:

1. Proof that the current Comprehensive Plan Map is in error, if applicable.
2. Substantial evidence showing how changes in the community warrant the proposed change in the pattern and allocation of land use designations.
3. Substantial evidence showing how the proposed change in the land use designation complies with:
   a. Statewide Planning Goals and Oregon Administrative Rules;
   b. Comprehensive Plan goals and policies; and
   c. Sustains the balance of needed land uses within the Woodburn Urban Growth Boundary.
4. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:
   a. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or
   b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,
   c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.

5.04.03 Formal Interpretation of the Woodburn Development Ordinance

A. Purpose: The purpose of a Type IV Interpretation is to provide a procedure for the City Council to consider and to clarify an ambiguous element of the Woodburn Development Ordinance.

B. Criteria: The appropriateness of the proposed interpretation shall be reviewed in light of the following factors:

1. The consistency of the proposed interpretation with the intent of the Comprehensive Plan, based on an evaluation of applicable goals and policies;

2. The compatibility of the interpretation with associated definitions, guidelines and standards of the Woodburn Development Ordinance and applicable state statutes;

3. The positive and negative consequences of the interpretation on the subject property, properties in the vicinity and its application throughout the City as a whole; and

4. The need for further consideration as either an amendment of this ordinance or the consideration through the appropriate permitting review procedure.

5.04.04 Official Zoning Map Change, Owner Initiated

A. Purpose: The purpose of an Owner Initiated Official Zoning Map Change is to provide a procedure to change the Official Zoning Map, in a manner consistent with the Woodburn Comprehensive Plan.

B. Criteria: The following criteria shall be considered in evaluating an Official Zoning Map Change;

1. Demonstrated need for the proposed use and the other permitted uses within the proposed zoning designation.

2. Demonstrated need that the subject property best meets the need relative to other properties in the existing developable land inventory already designated with the same zone considering size, location, configuration, visibility and other significant attributes of the subject property.

3. Demonstration that amendments which significantly affect transportation facilities ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

a. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or

b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,

c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.

C. Delineation: Upon approval, a zone change shall be delineated on the Official Zoning Map by the Director. A zone change subject to specific conditions shall be annotated on the Official Zoning Map to indicate that such conditions are attached to the designation.