

**TITLE III: ADMINISTRATION**

Chapter

**30. CITY ORGANIZATIONS**

**31. ELECTIONS**

**32. POLICIES AND PROCEDURES**

**33. TAX AND FINANCE**



**CHAPTER 30: CITY ORGANIZATIONS**

Section

- 30.01 Reserved
- 30.02 Library Board
- 30.03 Planning Commission
  
- 30.99 Penalty

(2) The public library shall be financed through the use of General Fund monies, revenue obtained from the operation of the library, grants, gifts, donations and bequest received and designated to be used for library purposes, and any tax levies that may be authorized by the electors.

**§ 30.01 RESERVED.**

(3) The city public library shall be the public agency responsible for providing and making freely accessible to all residents in the city library and information services suitable to persons of all ages.

**§ 30.02 LIBRARY BOARD.**

(A) *Lakeside public library established.*

[Text continues on page 4.]

(1) A public library is hereby established for the city under the provisions of O.R.S. 357.400 to 357.621.

**Lakeside - Administration****(B) *Library Board.***

(1) The Lakeside Public Library Board is hereby created. The Board shall consist of seven members, to be nominated by the Mayor and appointed and confirmed by the City Council.

(2) The term of office of the Board members shall be four years and their terms shall commence on July 1 in the year of their appointment. The terms of office shall be staggered so that the terms of not more than two Board members will expire in the same year. Of the first three Board members appointed, one member shall initially hold office for two years, one for three years and one for four years. At the expiration of the term of any members of such Board, the City Council shall appoint a new member or may reappoint a member for a term of four years. If a vacancy occurs during a term of office, the governing body shall appoint a new member for the unexpired term. No person shall hold appointment as a member for more than two full consecutive terms, but any person may be appointed again to the Board after an interval of one year.

(3) Members of the Board shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

**(C) *Board organization.***

(1) The Library Board shall elect a Chairperson from its members.

(2) The Library Director shall serve as Secretary to the Board and keep the record of its actions.

(3) The Board may establish and amend rules and regulations for its government and procedure consistent with the laws of the state and with the charter, ordinances, resolutions and regulations of the city.

(4) The Board shall meet at least ten times each year and at such other times as it may provide by its rules.

**(D) *Library Board; general powers.***

(1) The Library Board shall be a governing board, but this section shall not be construed as depriving elected or appointed officials of the city of any power they may have under the laws of the state or the Charter of the city.

(2) The Board shall have powers and duties as follows.

(a) The Library Board shall assist in the interview process of selecting and appointing a Library Director. The City Recorder/Manager, as the fiscal and internal administrative agent for the library, shall have primary responsibility for library personnel, including recruitment, selection, classification and pay, and supervision.

(b) The Library Board shall keep the City Council informed about rules and policies for the efficient and effective operation of the library, its services and programs.

(c) The Library Board shall assist the Library Director in preparation of the annual budget request to be submitted by the Library Director to the City Recorder/Manager.

(d) The Library Board shall make recommendations for the acceptance, use or expenditure of any real or personal property or funds donated to the library under division (E) below, or make recommendations for the purchase, control or disposal of real and personal property necessary for the purposes of the library.

(e) The Library Board shall make recommendations for the selection of sites for public library buildings or for location of library facilities.

(f) The Library Board shall review and recommend to the City Council terms for contracts and working relationships with private and public agencies regarding library services.

(g) The Library Board shall approve an annual report to the state library and to the City Council submitted in a timely manner on a form supplied by the state library.

(h) The Library Board shall develop and recommend to the City Council long-range plans for library service, consistent with city priorities and with state, regional and national goals for libraries.

(E) *Acceptance of gifts for library purposes.* Gifts of any real or personal property or funds donated to the library and accepted by the governing body shall be administered in accordance with each gift's terms, and all property or funds shall be held in the name of the city.

(F) *Internal administrative policies and procedures.* The City Recorder/Manager shall be the fiscal and internal administrative agent for the public library and the library shall operate in conformance with city administrative procedures including those pertaining to the following:

- (1) Personnel, including recruitment, selection, classification and pay for library personnel;
- (2) Receipt, disbursement and accounting for monies;
- (3) Maintenance of general books, cost accounting records and other financial documents;
- (4) Budget administration; and
- (5) Operation and maintenance of equipment and buildings.

(G) *Prohibited actions and penalties.*

(1) It shall be unlawful for any person to willfully or maliciously detain any library materials belonging to the city public library for 30 days after notice in writing from the Library Director that the library material is past due.

(2) The notice shall bear upon its face a copy of O.R.S. 357.975 and 357.990. (Ord. 120, passed 3-19-1987; Ord. 127, passed 6-18-1987; Ord. 129, passed 2-19-1988) Penalty, see § 30.99

### § 30.03 PLANNING COMMISSION.

(A) *Continuation of the Planning Commission.* There is continued a City Planning Commission, referred to in this section as "Commission", for the city.

(B) *Powers and duties of Commission.* Except as otherwise provided by the City Council, the Commission may:

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

(2) Recommend to the Council and other public authorities plans for regulating future of 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 all public utilities and transportation facilities;

(3) Recommend to the Council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to private and public enterprises engaged in industrial pursuits;

(4) Make an economic survey of present and potential possibilities of the city with a view to ascertaining its industrial needs;

## Lakeside - Administration

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

(6) Perform all other acts and duties necessary or proper to carry out the provisions of this section;

(7) Study and propose in general measures that may be advisable for promotion of public interest, health, safety, comfort, convenience and welfare of the city and the area six miles adjacent;

(8) Make recommendations to the Council for the amendment of the Comprehensive Plan for the city;

(9) Recommend to the Council ordinances intended to carry out the purposes, principles and proposals expressed in the Comprehensive Plan;

(10) Advise and cooperate with other planning agencies within the state and upon request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in city planning;

(11) Promote public interest in and understanding of the comprehensive plan and of planning and zoning in general;

(12) Make recommendations and an annual report each year to the Council concerning the operation of the Commission and of the status of planning and zoning within its jurisdiction;

(13) Make recommendations to the Council with regards to orderly development of territory within the city; and

(14) Perform all other acts and duties necessary to carry out the provisions of O.R.S. 227.010 through 227.180, and other duties as prescribed by ordinance.

(C) *Membership, appointment, term and removal of members.*

(1) The Commission consists of five voting members, each of whom shall be a resident of the city and appointed by the Council. Positions are numbered one through five for record-keeping purposes only. Such numbers are not to be used in any posting or advertisement. The Council may set length of terms for the interim period to afford an orderly and proper staggering of terms.

(2) The Council may designate advisory, non-voting members to provide technical advice to the voting members.

(3) The term of office on the Commission shall be four years and no member shall serve for more than two consecutive full terms. The term of office shall commence on January 1, and expire on December 31.

(4) A member may be removed by the Council during the member's term for misconduct or nonperformance of duty (defined as missing three consecutive meetings without justifiable cause) after a public hearing before the Council.

(5) Vacancies (due to resignation or removal of a Commissioner) shall be filled by Council appointment for the remainder of the unexpired term of the predecessor. The opening is to be posted immediately for a period of two weeks. Applications shall be submitted to City Hall and forwarded to all Planning Commissioners and City Councilors. The Planning Commission evaluates the candidates and makes its recommendation and/or nomination to the City Council. The City Council shall consider applicants and the recommendations of the Planning Commission, and make appointments.

(a) If the remainder of the term of the vacated position is more than one-half of the term, the appointment shall be considered as the first full term.

(b) If the remainder of the vacated position is less than one-half of the term, the appointee may serve an additional two full terms.

(6) By the second week of October, prior to the expiration of any Commissioner's term of office, the City Recorder/Manager shall cause to have the opening for a Commissioner posted for two weeks. Commissioners who have served their first term are eligible for a second term, and must re-apply. Applications shall be submitted to City Hall and forwarded to all Planning Commissioners and to City Councilors. The Planning Commission evaluates the candidates and makes its recommendation and/or nomination to the City Council. The City Council shall consider all applicants and make appointments at the December meeting.

(7) Members shall serve without compensation other than reimbursement for duly authorized expenses.

(8) No two or more voting members of the Commission shall have the same business, trade, profession or occupation: however, business persons engaged in different kinds of business shall not be prevented by this division (C)(8) from serving. Being retired shall not be considered an occupation within the meaning of this division (C).

(D) *General procedures.*

(1) The Commission shall adopt rules and procedures for the transaction of business and shall keep a record of its resolutions, transactions, findings, recommendations and determinations, which record shall be a public record.

(2) The Planning Director shall be the Secretary of the Commission and shall provide staff services and recommendations and determinations.

(3) The Commission shall elect from its voting membership a Chairperson and Vice Chairperson to serve for the remainder of their full term, subject to annual ratification of the Commission.

(a) To be eligible for either of these offices, a Commissioner must have served a minimum of one year on the Planning Commission.

(b) Any person appointed to a subsequent term on the Planning Commission shall be eligible to be elected as Chairperson or Vice Chairperson.

(4) A member of the Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, brother, sister, parent, father-in-law, mother-in-law of the member, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken.

(Ord. 13-275, passed 1-9-2014)

**§ 30.99 PENALTY.**

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

(B) Violation for willful detention of library materials is punishable upon conviction by a fine of not less than \$25 nor more than \$250. Such conviction and payment of the fine shall not be construed to constitute payment for library material, nor shall a person convicted under this section be thereby relieved of any obligation to return such material to the library.

(Ord. 120, passed 3-19-1987)





## CHAPTER 31: ELECTIONS

### Section

- 31.01 State law applies
- 31.02 Definitions
- 31.03 Candidates
- 31.04 Vacancies in office
- 31.05 Initiative and referendum

### § 31.01 STATE LAW APPLIES.

As provided by City Charter, § 26, state elections laws apply to matters not regulated by this subchapter. The City Charter and this subchapter prevail over any conflicting state laws. (Ord. 06-253, passed 5-11-2006)

### § 31.02 DEFINITIONS.

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

**CANDIDATE.** An individual whose name appears or is expected to appear on an official ballot.

**CITY LEGISLATION.** An ordinance or proposed ordinance, or a proposed amendment, revision or repeal of the City Charter.

**ELECTIVE CITY POSITION.** The office of Mayor or Councilor.

**ELECTOR.** An individual eligible under state and city law to vote in city election.

**INITIATIVE.** Proposed city legislation submitted to electors by a petition of qualified electors.

10 **MEASURE.** City legislation, or a proposition or question for city electors.

**PROSPECTIVE PETITION.** Information required for a completed petition, except for signatures and other identification of petition signers.

**QUALIFIED ELECTOR.** An individual qualified to vote under Oregon Constitution, Article II, § 2.

**RECORDER/MANAGER.** The City Recorder/Manager or authorized representative.

**REFERENDUM.** City legislation submitted to electors by the Council or by a petition of qualified electors, or a proposition or question submitted to city electors by the Council.

**REGULAR ELECTION.** A city election held at the same time as a primary or general biennial election for electing federal, state or county officers.

**SPECIAL ELECTION.** A city election not held on the date of a regular election.

**TERM OF OFFICE.** The term of office of the last person elected to the office. (Ord. 06-253, passed 5-11-2006)

### § 31.03 CANDIDATES.

(A) **Eligibility.** A qualified elector who has resided in the city during the past 30 days immediately preceding the election may be a candidate for an elective city position.

**Lakeside - Administration***(B) Nomination petition or declaration of candidacy.*

(1) An eligible elector may become a candidate for an elective city position by filing a nomination petition or a declaration of candidacy in a form prescribed by the Secretary of State and available from the City Recorder/Manager.

(2) A declaration of candidacy must be accompanied by any filing fee established by Council resolution.

(3) A nomination petition must contain signatures of not fewer than 25 city-qualified electors as follows.

(a) No elector may sign more than three petitions. If more than three are signed, the signature is valid only on the first three valid petitions filed.

(b) The signatures need not all be attached to one paper, but each separate paper of the petition must be attached to an affidavit of the circulator showing the number of signers and stating that each signature is the genuine signature of the person.

(c) Each signature must have next to it the signer's residence, by its street and number or other description, and the printed name of the signor.

(d) The City Recorder/Manager must certify the signatures in the nomination petition for genuineness by comparing them and the other required information with the elector registration cards on file with the County Clerk.

(e) After the petition is filed with the City Recorder/Manager, the City Recorder/Manager has ten days to verify the signatures, and attach to the petition a certificate stating the number of signatures believed genuine.

*(C) Petition or declaration contents.*

(1) A nomination petition or declaration of candidacy must contain:

(a) The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in addition to the candidate's full name;

(b) The residence address of the candidate;

(c) The office or position number for which the candidate seeks nomination;

(d) A statement that the candidate is willing to accept the office if elected;

(e) A statement that the candidate will qualify if elected;

(f) A statement of the candidate's occupation, educational and occupational background, and prior governmental experience; and

(g) The signature of the candidate.

(2) A declaration of candidacy must include a statement that any required fee is included with the declaration.

*(D) Filing.*

(1) A nomination petition or declaration of candidacy must be filed with the City Recorder/Manager.

(2) The City Recorder/Manager will date and time stamp immediately upon filing a nominating petition, declaration of candidacy, withdrawal or other document required to be filed.

(3) A nomination petition or declaration of candidacy will be filed not sooner than June 1 of the election year and not later than 65 days before the election date.

(E) *Deficient petitions.* If a nomination petition is not signed by the required number of qualified electors or the declaration of candidacy is not complete, the City Recorder/Manager will notify the candidate within five days after the filing. The City Recorder/Manager will return it immediately to the candidate, and state in writing how the petition is deficient. The deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed within the time requirements for filing petitions.

determine and declare the date of vacancy.

(F) *Withdrawal of candidacy; refund of filing fee.*

(1) A candidate who has filed a nomination petition or declaration of candidacy may withdraw not later than the sixty-seventh day before the election date by filing a statement of withdrawal with the City Recorder/Manager. The withdrawal must be made under oath and state the reasons for the withdrawal.

(2) If requested not later than 67 days before election date, the City Recorder/Manager will refund the filing fee, if any so paid, of a candidate who dies, withdraws or becomes ineligible for the nomination.

(G) *Certificate of nomination.* The City Recorder/Manager will certify the nominations to the County Clerk in accordance with the time requirements of state law stating the offices and the terms of office for which the candidates are nominated.  
(Ord. 06-253, passed 5-11-2006; Ord. 11-272, passed 7-23-2012)

#### **§ 31.04 VACANCIES IN OFFICE.**

(A) *Vacancy in office.* A city elective office becomes vacant as provided by the City Charter, § 31.

(B) *Filling of vacancy.*

(1) Upon becoming aware of a vacancy in an elective office, the Council must promptly

(2) A vacancy in an elective office must be filled as provided by City Charter, § 32.

(C) *Appointment by Council.*

(1) In filling a vacancy, the Council may make inquiries and hold interviews as it considers necessary for the appointment. The appointment may be made at a regular or special Council meeting.

(2) The Council will use the following procedures in the appointment process.

(a) Public notice to appropriate neighborhood organizations, civic groups, a newspaper of general circulation and other recognized groups.

(b) Deadline for submitting applications at least two weeks after the notice.

(c) Appointment from those applicants nominated and seconded for consideration by members of the Council. The City Recorder/Manager will announce the results of each ballot and will record each Councilor's ballot. An applicant who receives a majority of the votes by the current Council members will be appointed to the vacant position. If no applicant receives a majority vote on the first ballot, the Council will continue to vote on the two applicants who receive the most votes until an applicant receives a majority of the Councilors voting.  
(Ord. 06-253, passed 5-11-2006; Ord. 11-272, passed 7-23-2012)

**§ 31.05 INITIATIVE AND REFERENDUM.**

(A) *Prospective petition.*

(1) Before circulating a petition proposing an initiative or referendum for city legislation, the chief petitioners must file a prospective petition with the City Recorder/Manager. The Recorder will provide the form showing:

(a) The signatures, printed names and mailing addresses of at least two and not more than three chief petitioners, all of whom must be city

electors;

(b) For initiative petitions, the text of

the city legislation proposed for adoption, and, where applicable, the title, ordinance number and Charter or code section numbers proposed for amendment, revision or repeal;

(c) For referendum petitions, the text of the city legislation proposed for referral, and where applicable, the title, ordinance number or code section numbers of the city legislation proposed for referral; and

(d) Whether one or more persons will be paid for obtaining signatures on the petition.

(2) The City Recorder/Manager must date and time stamp any prospective petition filed.

(3) After the City Recorder/Manager determines that the prospective petition complies with this subchapter and state law, the City Recorder/Manager will certify to one of the chief petitioners that petitions may be circulated among city electors in accordance with division (C) below.

(B) *Ballot title; appeal.*

(1) Prior to the end of the fifth business day after a prospective initiative petition is filed and meets all legal requirements, the City Recorder/Manager will review the text of the proposed initiative to determine if it complies with the single subject requirement and if it proposes city legislation.

(2) If the proposed text does not meet the requirements of division (B)(1) above, the City Recorder/Manager will notify a chief petitioner by certified mail, return receipt requested, that the prospective petition does not meet the single subject or city legislation requirement.

(3) Any city elector dissatisfied with the City Recorder/Manager's determination may file a petition for review in circuit court. The petition for

review must be filed not later than the seventh business day after the written determination by the City Recorder/Manager.

(4) If the proposed initiative meets the requirements of division (B)(1) or a referendum petition is certified for circulation, the City Recorder/Manager will send two copies of the prospective petition to the City Attorney. The City Attorney has five business days after receipt to prepare a ballot title for the proposed measure and an explanatory statement for the voter's pamphlet. The ballot title must conform to the requirements of state law.

(a) The explanatory statement must consist of an impartial, simple and understandable statement of not more than 500 words explaining the measure and its effect.

(b) After preparing the ballot title and explanatory statement, the City Attorney will return one copy of the prospective petition, ballot title and explanatory statement to the City Recorder/Manager and one copy to one of the chief petitioners.

(5) After receiving a ballot title from the City Attorney, the City Recorder/Manager must publish in a newspaper of general circulation in the city a notice of receipt of the ballot title. The notice must state that a city elector may file a petition for review of the ballot title not later than the date referred to in division (B)(6) below.

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

(7) Any city elector filing a petition of review with the circuit court must file a copy of the challenge with the City Recorder/Manager not later than the end of the business day next following the

date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

unless it contains at least the required number of

(8) The procedures in divisions (B)(1) through (B)(7) above also apply to referendum measures; however, the completion of these procedures is not a prerequisite to the circulation of petitions for referendum measures under division (C) below. Ballot titles need not be stated on petitions circulated to propose referendum measures.

(C) *Petition and circulation requirements.*

(1) After the requirements of division (A)(3) above are met for referendum petitions and after the requirements of division (B)(6) above are met for initiative petitions, the chief petitioners may circulate a petition for the measure among city electors. The petition (cover sheet and signature sheet) must conform to the requirements of state law.

(2) The petition identification number will be assigned by the City Recorder/Manager.

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

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

(D) *Filing and percentage requirements; verification.*

(1) The City Recorder/Manager will accept for signature verification only petitions that comply with the requirements of this subchapter and other applicable law.

(2) No petition may be accepted for filing

verified signatures to submit the measure to the electors, as prescribed by divisions (D)(7), (D)(8) or (D)(9) below.

(3) No initiative petition may be accepted for signature verification more than six months after the date of the City Recorder/Manager's certification under division (B)(6) above.

(4) Any petition to refer legislation adopted by the Council must be submitted for signature verification not more than 30 days after the Council's adoption of the legislation.

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

(6) Upon the acceptance of a petition, the City Recorder/Manager must verify the signatures. The verification may be performed by random sampling in a manner approved by the Secretary of State. Within 30 days after the City Recorder/Manager's acceptance of a petition, the City Recorder/Manager must certify to the Council whether the petition contains a sufficient number of qualified signatures to require the submission of the proposed measure to city electors. The City Recorder/Manager must state in the certificate the number of qualified signatures prescribed by divisions (D)(7), (D)(8) or (D)(9) below to require the proposed city legislation to be submitted to city electors. The petition is considered filed as of the date of the City Recorder/Manager's certification.

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

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

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

(E) *Measure referred by Council.*

(1) The Council may directly refer to the electors any ordinance or any proposed ordinance, property tax, bond or other proposition or question. It may also directly refer to the electors any proposed amendment, revision or the repeal of the City Charter.

(2) The City Attorney will prepare a ballot title and explanatory statement that conforms to the requirements of state law. The Council will certify and file the ballot title and explanatory statement with the City Recorder/Manager.

(3) The City Recorder/Manager will publish in a newspaper of general circulation in the city a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date set in division (E)(4) below.

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

(5) A measure will be considered filed under this section as of the date the Council delivers its certified ballot title to the City Recorder/Manager.

(F) *Withdrawal, adoption or election.*

(1) The chief petitioners may withdraw a verified petition at any time before Council action to adopt the proposed legislation or submit it to the electors. Any withdrawal must be either by written or

oral declaration made at a Council meeting and entered in the minutes of that meeting.

(2) Unless a petition is withdrawn, after receiving a certification from the City Recorder/Manager that a petition has sufficient signatures to require the proposed city legislation to be submitted to the electors under division (D)(6) above, the Council may either adopt the proposed legislation by ordinance, or call an election to submit the legislation to the electors. The Council may also call an election to submit matters to the electors upon referral under division (E) above.

(3) The Council must call the election on the next election date available under state law that is not sooner than the ninetieth day after the date of the City Recorder/Manager's certificate of sufficient signatures. For a Council referral, the election on the referendum of city legislation may be held on the next election date available under state law.

(G) *Election notice and results.*

(1) Notice of elections on measures submitted to city electors on regular or special election dates must be given in accordance with state law.

(2) Measures referred by the Council will be designated on the ballot: "Referred to the Voters by the City Council".

(3) Measures proposed by referendum petition will be designated on the ballot: "Referred by Petition".

(4) Measures proposed by initiative petition will be designated on the ballot: "Proposed by Initiative Petition".

(5) The City Recorder/Manager must certify the election results to the Council at the first Council meeting after the results are certified by the County Clerk.



(6) A measure adopted by the electors takes effect 30 days after the election, unless the measure expressly provides a different effective date. (Ord. 06-253, passed 5-11-2006; Ord. 11-272, passed 7-23-2012)



**CHAPTER 32: POLICIES AND PROCEDURES**

Section

*General Provisions*

**GENERAL PROVISIONS<sup>19</sup>**

- 32.01 Street assessment; enforcement
- 32.02 Public contracting; Contract Review Board

**§ 32.01 STREET ASSESSMENT; ENFORCEMENT.**

*Public Improvements; Special Assessments*

- 32.15 Definitions
- 32.16 Initiation of proceedings and report from the City Engineer
- 32.17 Council’s action on the City Engineer’s report
- 32.18 Resolution and notice of hearing
- 32.19 Manner of doing work
- 32.20 Hearing
- 32.21 Call for bids
- 32.22 Method of assessment and alternative methods of financing
- 32.23 Assessments prior to construction
- 32.24 Notice and levy of assessments
- 32.25 Errors in assessment calculations
- 32.26 Deficit assessment
- 32.27 Rebates
- 32.28 Lien records and foreclosure proceedings
- 32.29 Abandonment of proceedings
- 32.30 Curative provisions
- 32.31 Remedies
- 32.32 Reassessment
- 32.33 Reapportionment of assessments

(A) Street assessments duly levied against properties and property owners in the city must be paid by the assessed property owners as prescribed by the respective assessment ordinance.

(B) Where the respective assessment ordinance provides for a payment option by the assessed property owners, and the owner fails to choose one of the options within the time frame of the respective assessment ordinance, then the entire assessment shall be immediately due.

(C) In the event that an assessed property owner does not pay the assessment by one of the payment options, as prescribed by the respective assessment ordinance, the city may use all available legal remedies to recover the unpaid assessment as a lump sum, including seeking a judgment against the nonpaying property owner for the full assessment plus the city’s attorney fees, as well as all costs reasonably incurred by the city in the prosecution of the action.

(Ord. 167, passed 4-14-1994)

**§ 32.02 PUBLIC CONTRACTING; CONTRACT REVIEW BOARD.**

*Disposition of Found and Unclaimed Property*

- 32.45 Definitions
- 32.46 Records and reports
- 32.47 Treatment of surplus property
- 32.48 Property to be held at expense of owner

(A) The City Council is designated as the local Contract Review Board under the State of Oregon Public Contracting Code, O.R.S. Chapter 279A, 279B and 279C. The Contract Review Board may, from time to time, delegate its powers and responsibilities

consistent with the State Public Contracting Code, the Model Rules or the city ordinances. The City Recorder/Manager, or his or her designated purchasing agent, and the City Public Works Department are designated as the city's "contracting agency" for purposes of contracting powers and duties assigned to the city as a "contracting agency" under the State Public Contracting Code or the Model Rules.

(B) Except as specifically provided herein, public contracts shall be let by the city according to the State Public Contracting Code, including the Model Rules adopted by the State Attorney General as they now exist and as they may be amended in the future, and the city ordinances. Definitions provided by the State Public Contracting Code or the Model Rules shall apply to city procurement, except as may be specifically provided herein.

(C) The following classes of public contracts are hereby exempted from competitive procurement:

- (1) Any contract exempted by the State Public Contracting Code or Model Rules;
- (2) Change orders or contract amendments are reasonably related to the scope of work under the original contract, up to \$50,000. Change orders or other amendments that increase the initial price of the contract by more than \$50,000 must be separately approved by the Contract Review Board;
- (3) Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in divisions (F)(1) and (F)(2) below;
- (4) Purchases through federal programs, pursuant to O.R.S. 279A.180;
- (5) Contracts made with or the cost of which is provided by other public agencies or the federal government;
- (6) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(a) The original contract met due requirements of this chapter;

(b) The contract allows other public agency usage of this contract; and

(c) The original contracting public agency concurs.

(7) An emergency contract, provided that the contracting agency adheres to the requirements of O.R.S. 279B.080 or 279C.335(5) and the Model Rules;

(8) A public facility improvement agreement entered into between the city and a person responsible for carrying out conditions of approval of a land use decision of the city. The term **LAND USE DECISION** has the meaning provided by O.R.S. 197.015; and

(9) Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.

(D) Administrative staff and departments have contracting authority and responsibilities as follows.

(1) The City Recorder/Manager (or designee) is authorized to:

(a) Enter into city contracts not to exceed \$50,000 without additional authorization of the Contract Review Board;

(b) Recommend that the Contract Review Board approve or disapprove contract awards in excess of \$50,000, or change orders or amendments to contracts of more than \$50,000;

(c) Consistent with the city ordinances, adopt forms, computer software, procedures and administrative policies for all city purchases; and

(d) Enter into contracts or permits for

local concessions and street vendors (pursuant to applicable city policy) where the annual amount to be paid to or by the city is not expected to exceed \$50,000 per year.

(1) The contracting agency shall informally

(2) The City Department of Public Works, shall have the authority to enter into city contracts not to exceed \$10,000 without additional authorization of the City Recorder/Manager.

(3) Purchases of goods from city employees shall require authorization of the City Recorder/Manager or designee. Provision of services by city personnel shall be in accordance with the city personnel policies and other applicable law.

(4) Departments (other than the Public Works Department), shall not contract for amounts above \$5,000. Solicitations and contracts above \$5,000 may be made upon approval of the contracting agency. All contracting by departments shall be according to approved city purchasing procedures adopted by the contracting agency or the Contract Review Board.

(5) Each department shall operate within its budget, or seek supplemental budgetary authority from City Council with respect to the contract.

(6) Each Department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.

(7) The Public Works Department or designee shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies and procedures.

(E) Notice of public improvement contracts may be published electronically where the contracting agency finds that such publication is likely to be cost effective, as provided in O.R.S. 279C.360.

(F) Public improvement contracts estimated by the contracting agency not to exceed \$50,000 may be let by competitive quote under the following procedures.

solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the contracting agency shall maintain records of the attempts to obtain quotes.

(2) The contracting agency 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 the basis of the lowest price, the contracting agency shall make a written record of the basis for the award.

(3) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.

(4) A public improvement contract let under this section may be amended by change order as provided in division (C) above.

(5) Public improvement contracts in excess of \$50,000 shall be let in accordance with the provisions of O.R.S. 279C.

(G) Personal services contracts (other than personal services contracts for architectural or engineering services), are subject to the rules established by this section.

(1) Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular city employees.

(2) Unless otherwise approved by the City Recorder/Manager, 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 O.R.S. 30.285 and O.R.S. 30.287 indemnification and defense.

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(3) Unless otherwise approved by the City Recorder/Manager, city 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.

(4) All city personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference to state law, unless state law provides otherwise. The City Attorney's office will prepare model contract provisions for use in city personal service contracts.

(5) The following procedure shall be observed in the selection of personal service contractors.

(a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, the City Recorder/Manager or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.

(b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the City Recorder/Manager or his or her designated officer shall solicit at least three prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.

(c) The City Recorder/Manager or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate city employee or by an interview committee.

(d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City

Recorder/Manager or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.

(6) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.

(7) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

(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 design or techniques peculiar to it, where applicable; and

(e) Any other factors relevant to the particular contract.

(8) The selection procedures described in this section may be waived by the City Recorder/Manager, at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.

(9) The City Recorder/Manager is delegated the authority to sign all personal service contracts.

(10) Nothing contained in this section shall

preclude the city from complying with provisions of federal or state law that require the city to utilize a different selection or contracting procedure.

(H) Disposition of surplus personal property may be made, at the discretion of the City Recorder/Manager or his or her designee, under provisions of the State Public Contracting Code, or the Model Rules or under the provisions of this section.

(1) From time to time and after personal property owned by the city is determined by the City Recorder/Manager or his or her designee to be surplus to the needs of the city, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the Contract Review Board, for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The city shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the city Internet website, or by advertisement in a newspaper of general circulation.

(2) Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the city's General Fund, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the city and a firm selected to conduct the auction.

(3) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including, but not limited to, warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this division (H).

(I) If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the contracting agency may, prior to contract award, negotiate for a price within the project budget under the following procedures.

(1) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the contracting agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.

(2) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.

(3) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.

(4) The contracting agency will adhere to the provisions of O.R.S. 279C.340 in applying this section.

(J) The contracting agency shall adopt appropriate purchasing policies dealing with ethics, environmental considerations and the like, subject to review and modification by the Contract Review Board.

(K) In the event of a conflict, between any provision of the State Public Contracting Code or the Model Rules and the city ordinances, the provisions of the State Contracting Code or the Model Rules shall control.  
(Ord. 05-251, passed 2-10-2005)

### ***PUBLIC IMPROVEMENTS; SPECIAL ASSESSMENTS***

#### **§ 32.15 DEFINITIONS.**

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

***IMPROVEMENT.*** Includes the definition of "local improvement" contained in O.R.S. 223.387, and it shall also include any work, construction or demolition designated by ordinance of the city.



**OWNER.** Has the meaning given such term in City Charter, Chapter IX, § 38. (Ord. 112, passed 10-16-1986)

may thereafter by motion:

**§ 32.16 INITIATION OF PROCEEDINGS AND REPORT FROM THE CITY ENGINEER.**

(A) Public improvements may be initiated by motion of the Council which shall direct the City Engineer to make a written report for such project and file the same with the City Recorder/Manager.

(B) Unless the Council shall direct otherwise, such report shall contain the following items:

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

(2) An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto;

(3) An estimate of the unit cost of the improvement to the specially benefitted properties;

(4) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefitted;

(5) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefitted by the improvement, with the names of the owners thereof; and

(6) A statement of outstanding assessments against property to be assessed. (Ord. 112, passed 10-16-1986)

**§ 32.17 COUNCIL'S ACTION ON THE CITY ENGINEER'S REPORT.**

After the City Engineer's report shall have been filed with the City Recorder/Manager, the Council

(A) Approve the report;

(B) Modify the report and approve it as modified;

(C) Require the City Engineer to supply additional or different information for such improvement; or

(D) Abandon the improvement.  
(Ord. 112, passed 10-16-1986)

**§ 32.18 RESOLUTION AND NOTICE OF HEARING.**

After the Council shall have approved the City Engineer's report as submitted or modified, the Council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement, and shall direct the City Recorder/Manager to give notice of such improvement by two publications one week apart in a newspaper of general circulation within the city and by mailing copies of such notice to the owners to be assessed for the costs of such improvement, which said notice shall contain the following items:

(A) A statement that the report of the City Engineer is on file in the office of the City Recorder/Manager and is subject to public examination and that said report is by reference thereto made a part of the notice;

(B) A statement that the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the Council; and if prior to 5:00 p.m. on the date of such hearing there shall be presented to the City Recorder/Manager valid written remonstrances by the owners of two-thirds of the area within the boundaries of the district, then the improvement will be abandoned for at least six months;

(C) A description of the real property to be specially benefitted by the improvement;

(D) The names of the owners of such property;

(E) The estimate of the unit cost of the improvement to the property specially benefitted by a statement of such cost set opposite the name of the owner thereof; and

(F) The total estimated cost of the improvement to be paid by special assessments to benefitted properties.  
(Ord. 112, passed 10-16-1986)

### **§ 32.19 MANNER OF DOING WORK.**

The Council may provide in the improvement resolution that the construction work may be done in whole, or in part, by a private contractor, by the city, by any other governmental agency, or by any combination thereof.  
(Ord. 112, passed 10-16-1986)

### **§ 32.20 HEARING.**

At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of said hearing or written remonstrances and oral objections, if any, the Council may, by motion, at the time of said hearing or within 60 days thereafter, order said improvement to be carried out in accordance with the resolution, or the Council may, on its own motion, abandon the improvement.  
(Ord. 112, passed 10-16-1986)

### **§ 32.21 CALL FOR BIDS.**

(A) The Council may, in its discretion, direct the City Recorder/Manager to advertise for bids for construction of all, or any part, of the improvement project on the basis of the Council-approved City Engineer's report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after said public hearing; however, no contract shall be let until after the public

hearing has been held to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the Council shall determine the time and matter of advertisement for bids, and the contracts shall be let to the lowest responsible bidder, provided that the Council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall require the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city.

(B) If the Council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is substantially in excess of the City Engineer's estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of such bid, and it may direct the City Recorder/Manager to publish one notice thereof in a newspaper of general circulation in the city.  
(Ord. 112, passed 10-16-1986)

### **§ 32.22 METHOD OF ASSESSMENT AND ALTERNATIVE METHODS OF FINANCING.**

(A) The Council in adopting a method of assessment of the costs of the improvement may:

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

(2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefitted;

(3) Authorize payment by the city of all or any part of the cost of any such improvement when in the opinion of the Council the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefitted property of the costs of the improvement; or

(4) Use general obligation improvement warrants or other available means for interim financing of the improvement.

to be assessed, the amount of the proposed assessment for each parcel

(B) Nothing contained in this subchapter shall preclude the Council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds or other federal, state or city revenues. In the event that such other means of financing improvements are used, the Council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

(Ord. 112, passed 10-16-1986)

### **§ 32.23 ASSESSMENTS PRIOR TO CONSTRUCTION.**

If the Council has elected to levy assessments on the benefitted property prior to construction, then the Council shall hear and consider the manner and method of assessment, and any objections thereto, at the initial hearing on the project; and, after determining the amount of the assessment to be charged against each parcel of property within the improvement district according to the special and peculiar benefits accruing thereto, it may levy the assessments by ordinance, subject to provisions for deficit assessments or rebates following the completion of construction and determination of actual costs.

(Ord. 112, passed 10-16-1986)

### **§ 32.24 NOTICE AND LEVY OF ASSESSMENTS.**

If assessment of benefitted property has not been made on the basis of estimates of the City Engineer, then when actual costs have been determined, the City Recorder/Manager shall give notice of the proposed assessments by publication in a newspaper of general circulation in the city and by mail or delivery to the owners of property to be assessed at least ten days prior to the date that the proposed assessments are to be considered by the City Council. The notice shall contain a description of the property

of such property, and the latest date that objections may be filed with the City Recorder/Manager, which date shall not be earlier than the tenth day after the date of publication and mailing, and that such objections must be in writing and state the grounds therefor. The notice shall also state that the Council will enact an assessment ordinance following the consideration of the proposed assessments and any objections thereto; and, if the owner of property assessed shall fail, within 30 days of the enactment of the said ordinance, to either apply to pay such assessment in installments or to pay the assessment in full, then interest shall commence to run on the assessment and the property will be subject to foreclosure. The Council shall consider the proposed assessments, and any objections thereto, and may adopt, correct, modify or revise the proposed assessments and determine the amount of assessment to be charged against each parcel of property within the improvement district according to the special and peculiar benefits accruing thereto from the improvement and shall levy the assessments by ordinance.

(Ord. 112, passed 10-16-1986)

### **§ 32.25 ERRORS IN ASSESSMENT CALCULATIONS.**

Claimed errors in the calculation of assessments shall be called to the attention of the City Recorder/Manager, who shall determine whether there has been an error in fact. If the City Recorder/Manager shall find that there has been an error in fact, he or she shall recommend to the Council an amendment to the assessment ordinance to correct such error, and upon enactment of such amendment, the City Recorder/Manager shall make the necessary correction in the docket of city liens and send a corrected notice of assessment by registered or certified mail.

(Ord. 112, passed 10-16-1986)

### **§ 32.26 DEFICIT ASSESSMENT.**

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the

assessment is insufficient to defray the expenses of

the improvement, the Council may, by motion,

declare such deficit and prepare a proposed deficit assessment. The Council shall set a time for a hearing of objections to such deficit assessment, and shall direct the City Recorder/Manager to publish one notice thereof in a newspaper of general circulation in the city and mail copies of such notice to the owners of property to be assessed for the costs of the improvement. After such hearing, the Council shall make a just and equitable deficit assessment by ordinance which shall be entered in the docket of city liens as provided by this subchapter, and notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with § 32.24.  
(Ord. 112, passed 10-16-1986)

### **§ 32.27 REBATES.**

If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the Council must ascertain and declare the same by ordinance, and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or his or her legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.  
(Ord. 112, passed 10-16-1986)

### **§ 32.28 LIEN RECORDS AND FORECLOSURE PROCEEDINGS.**

After passage of the assessment ordinance by the Council, the City Recorder/Manager shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land or portion thereof, together with a description of the improvement, the name of the owners and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land or portions thereof which has been assessed for such improvement. All assessment liens of the city shall be

superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at a rate to be determined by the Council at the time of the assessment on all amounts not paid within 30 days from the date of such assessment ordinance the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state to redeem such property.  
(Ord. 112, passed 10-16-1986; Ord. 165, passed 4-14-1994)

### **§ 32.29 ABANDONMENT OF PROCEEDINGS.**

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this subchapter at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the persons paying the same, their assigns or legal representatives.  
(Ord. 112, passed 10-16-1986)

### **§ 32.30 CURATIVE PROVISIONS.**

No improvement assessment shall be rendered invalid by reason of a failure of the City Engineers' report to contain all of the information required by § 32.16, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the owner of any property as required by this subchapter, or by reason of any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters

by suitable action and proceedings.  
(Ord. 112, passed 10-16-1986)

reassessment for any improvement which has been made by the city has been, or shall be, set aside, annulled, declared or

### § 32.31 REMEDIES.

(A) Subject to the curative provisions of § 32.30 and the rights of the city to reassess as provided in § 32.32, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein.

(B) A property owner, who has filed written objections with the City Recorder/Manager prior to the public hearing, may have the right to apply for a writ of review based upon the City Council exercising its functions erroneously or arbitrarily, or exceeding its jurisdiction to the injury of some substantial right of such owner, if the facts supporting such claim have been specifically set forth in written objections.

(C) A property owner, who has filed written objections with the City Recorder/Manager prior to the public hearing, may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city, and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the City Recorder/Manager within 30 days after receiving notice or knowledge of the improvement.

(D) No provision of this section shall be construed so as to lengthen any period of redemption, or so as to affect the running of any statute of limitation. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the City Council to remedy or cure the alleged errors or defects.

(Ord. 112, passed 10-16-1986)

### § 32.32 REASSESSMENT.

Whenever any assessment, deficit or

rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the state.  
(Ord. 112, passed 10-16-1986)

### **§ 32.33 REAPPORTIONMENT OF ASSESSMENTS.**

(A) Property in single ownership at the time of the initial hearing at which the city acquires jurisdiction to perform a public improvement need not be divided by the city for the purpose of levying assessments except when the city receives actual notice of the division of ownership of such property prior to the enactment of the assessment ordinance.

(B) After an assessment has been levied upon contiguous property in single ownership as provided in this subchapter, there shall be no division or reapportionment of the assessment lien except under the following procedure.

(1) The owner of all or any portion of a parcel of contiguous land subject to a single assessment may make application to the City Recorder/Manager for a division and reapportionment of the assessment; and such application shall contain a legal description of each parcel of land into which the property is proposed to be divided together with the name and address of each of the owners and other parties having an interest in such property.

(2) After the receipt of the application, the City Recorder/Manager shall mail notice to each owner and party having an interest in such property of the application and the date and time of the meeting of the City Council at which the matter shall be considered, which meeting shall not be earlier than ten days from the mailing of written notice.

(3) At or prior to the meeting of the City Council at which the application will be considered the City Recorder/Manager shall make a report and recommendation to the Council for the apportioning of



the assessment lien between portions of the property to be divided and describing the effect of such division upon the security of the city.

(4) At the designated meeting of the City Council the applicant and any owner or party having an interest in such property may be heard and the Council may make a decision at such meeting or the Council may defer its decision to a meeting to be held within 45 days.

(5) The Council shall make no reapportionment of an assessment which will impair the security of the city for the collection of the assessments upon the property, and the Council may impose conditions upon such reapportionment for the protection of the city.

(6) A reapportionment of assessments shall become effective only after the enactment of an ordinance declaring such reapportionment and providing for the amendment of the docket of city liens to conform with the ordinance.  
(Ord. 112, passed 10-16-1986)

#### ***DISPOSITION OF FOUND AND UNCLAIMED PROPERTY***

#### **§ 32.45 DEFINITIONS.**

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

***FOUND PROPERTY.*** Money or personal property of any description other than contraband, firearms used in commission of a crime, other property being held as evidence in any civil or criminal proceeding, animals or motor vehicles, the true owner of which cannot be readily ascertained, and which is:

(1) Found by any officer or employee of the city in or about any vehicle, structure, park, lot, street or other place or premises owned by or under control of the city; or

(2) Surrendered to an officer or employee of the city by any person reporting it to have been found at any place.

***SURPLUS PROPERTY.*** Personal property belonging to and owned by the city, or agency which has been determined by the City Recorder/Manager to be of no further use to the city.

***UNCLAIMED MOTOR VEHICLE.*** A motor vehicle taken into custody after notice is provided.

***UNCLAIMED PROPERTY.*** Money or personal property of any description other than contraband, firearms used in the commission of a crime, animals or motor vehicles, and which has, for any reason, come into the custody, actual or constructive, of the city and is no longer required to be held by the city for any purpose, and remains unclaimed for 30 days after notice to the owner or other interested person is provided.

(Ord. 163, passed 4-14-1994)

#### **§ 32.46 RECORDS AND REPORTS.**

(A) The officer or employee of the city into whose custody found property first comes shall deliver to the custody of the city the property together with a report.

(B) The report shall state the following information: the date, time and place of the finding; the date and time the property came into the custody of the city; a description of the property; and the location where the property is kept.

(1) When found property comes into the custody of the city, the city shall attach an identification tag to it.

(2) The property shall be held by the city for a minimum period of 30 days, during which time the owner may redeem the property by satisfactorily establishing ownership, and the payment of any costs as provided in this subchapter.

(3) Found property that remains unclaimed after the redemption period shall be disposed of as

unclaimed property pursuant to this subchapter.  
(Ord. 163, passed 4-14-1994)

**§ 32.47 TREATMENT OF SURPLUS  
PROPERTY.**

(A) Determination that personal property is surplus and of no further use to a using agency is within the exclusive jurisdiction of the City Council.

(B) Disposition of surplus property is within the exclusive jurisdiction of the City Council.  
(Ord. 163, passed 4-14-1994)

**§ 32.48 PROPERTY TO BE HELD AT  
EXPENSE OF OWNER.**

Found property, unclaimed property and unclaimed motor vehicles that come into the custody, actual or constructive, of the city for any reason, shall be held at the expense of the owner and any costs incurred by the city in finding, transportation, giving of notice, storage, care and custody of the property shall be paid by the owner or other person lawfully entitled to possession before it may be released.  
(Ord. 163, passed 4-14-1994)

**CHAPTER 33: TAX AND FINANCE**

Section

	<i>Transient Occupancy Tax</i>		contents; execution
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***TRANSIENT OCCUPANCY TAX***

**§ 33.01 TITLE.**

This subchapter shall be known as the “Transient Tax Ordinance for the City of Lakeside”. (Ord. 155A, passed 5-13-1993)

**§ 33.02 DEFINITIONS.**

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

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

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

***CITY COUNCIL.*** The City Council of the City of Lakeside, Oregon.

***MOTEL.*** Any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less, for dwelling, lodging or sleeping purposes, and includes any motel, inn, tourist home or house, hotel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

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

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

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

**RENT.** The consideration charged, whether or not received by the operator, for the occupancy of space in a hotel or RV park valued in money, goods, labor, credits, property or other considerations valued in money, without any deduction.

**RENT PACKAGE PLAN.** The consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient tax under this subchapter shall be the same charge made for rent when consideration is not a part of a package plan.

**RV PARK.** Any land use intended, occupied or designed for the placement of recreational vehicles (RV) for transient occupancy for 30 days or less.

**RVs.** As defined are trailers, motor homes, pick-up campers; which provide shelter and may or may not have self contained service provisions.

**TAX.** Either 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 or her collections.

**TRANSIENT.** Any individual who exercises occupancy or is entitled to occupancy in a motel/RV park 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/RV park shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a motel/RV park shall be deemed a **TRANSIENT** until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a **TRANSIENT**, uninterrupted periods of time extending both prior and subsequent to the effective date of this subchapter may be considered. A person who pays for lodging/RV space on a monthly basis, irrespective of the number of days in such month shall not be deemed a **TRANSIENT**.  
(Ord. 155A, passed 5-13-1993)

### § 33.03 TAX IMPOSED.

(A) For the privilege of occupancy in any motel/RV park on and after July 1, 2003 each transient shall pay a tax in the amount of 7.5% of the rent charged by the operator.

(B) The tax constitutes a debt owned by the transient to the city which is extinguished only by payment to the operator or the city.

(C) The transient shall pay the tax to the operator of the motel/RV park at the time the rent is paid.

(D) The operator shall enter the tax on his or her records when rent is collected if the operator keeps his or her records on the accrual basis.

(E) If rent is paid in installments a proportionate share of the tax shall be paid by the transient to the operator with each installment.

(F) If for any reason the tax due is not paid to the operator of the motel/RV park, the City Recorder/Manager may require that such tax shall be paid directly to the city.

(Ord. 155A, passed 5-13-1993) Penalty, see § 33.99

(G) In all cases, the rent paid or charged for occupancy shall exclude the sale of any good, services and commodities, other than the furnishing of rooms, accommodations, and parking space in a mobile home park or trailer/RV parks.  
(Ord. 155A, passed 5-13-1993; Ord. 03-241, passed 5-24-2003)

#### **§ 33.04 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.**

(A) Every operator renting rooms or RV spaces in this city, the occupancy of which is not exempt under the terms of this subchapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.

(B) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid and the operator shall not be liable for the tax until credits are paid, or deferred payments are made.  
(Ord. 155A, passed 5-13-1993) Penalty, see § 33.99

#### **§ 33.05 OPERATOR'S DUTIES.**

(A) Each operator shall collect the tax imposed by this subchapter at the same time as the rent is collected from every transient.

(B) The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator.

(C) No operator of a motel/RV park shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded except in the manner provided by this subchapter.

**§ 33.06 EXEMPTIONS.**

No tax imposed under this subchapter shall be imposed upon:

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

(B) Any occupant whose rent is of a value of less than \$2 per day;

(C) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his or her own use thereof; or

(D) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people.  
(Ord. 155A, passed 5-13-1993)

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**§ 33.07 REGISTRATION OF OPERATOR;  
FORM AND CONTENTS; EXECUTION.**

(A) Every person engaging in or about to engage in business as an operator of a motel/RV park in this city shall register with the City Recorder/Manager on a business license form provided by him or her.

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

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

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

(E) Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the City Recorder/Manager may require.

(Ord. 155A, passed 5-13-1993) Penalty, see § 33.99

### § 33.08 RETURNS AND PAYMENTS.

(A) The tax imposed by this subchapter shall be paid by the transient to the operator at the time that rent is paid. Such taxes collected by any operator are due and payable to the City Recorder/Manager as follows:

(1) On a monthly basis by the fifteenth day of the following month for the first 12 months following registration as an operator of a motel/RV park in the city;

(2) On a monthly basis by the fifteenth day of the following month for a period of time designated by the City Recorder/Manager whenever the operator has been delinquent in two or more consecutive payments; or

(3) On a quarterly basis on the fifteenth day of the month following the closed of the quarter for all other operators. The quarters are:

(a) First quarter: January, February, March;

(b) Second quarter: April, May, June;

(c) Third quarter: July, August, September; and

(d) Fourth quarter: October, November, December.

(B) Taxes are delinquent if not paid within ten days of the due date.

(C) Returns shall be filed in such form as the City Recorder/Manager may prescribe. Returns are due at the time the tax is paid. Returns shall show the

amount of tax collected or otherwise due for the related period. The City Recorder/Manager may require returns to show the total rentals upon which tax was collected or otherwise due.

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

(Ord. 155A, passed 5-13-1993)

### § 33.09 DELINQUENCY PENALTIES.

(A) An operator who has to been granted an extension of the time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of 10% of the tax due in addition to the tax.

(B) 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 extension of 30 days following the date on which the remittance became delinquent, shall pay a second delinquency penalty of 15% of the tax due, the amount of the tax, and the 10% penalty first imposed.

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

(D) 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 0.5% 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.

(E) Each penalty imposed and the interest accrued under the provisions of this section shall be merged with and become a part of the tax required to be paid.

(Ord. 155A, passed 5-13-1993)

**§ 33.10 DEFICIENCY DETERMINATIONS;  
FRAUD, EVASION, OPERATOR DELAY.**

shall be made and mailed

(A) *Deficiency determination.* If the City Recorder/Manager determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in § 33.09.

(1) In making a determination the City Recorder/Manager may offset overpayments if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayment. The interest on underpayments shall be computed in the manner set forth in § 33.09.

(2) The City Recorder/Manager shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail.

(B) *Fraud, refusal to collect, evasion.* If any operator shall fail or refuse to collect said tax or to make, within the time provided in this subchapter, any report and remittance of said tax or any portion thereof required by this subchapter, the City Recorder/Manager shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the City Recorder/Manager has determined the tax due that is imposed by this subchapter from any operator who has failed or refused to collect the same and to report and remit said tax, he or she shall proceed to determine and assess against such operator the tax and interest provided for by this subchapter. In case such determination is made, the City Recorder/Manager shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice



within three years after discovery by the City Recorder/Manager of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the City Recorder/Manager has given notice thereof

(C) *Cost of determining tax.* All costs to the city in determining the actual tax due from any operator shall be added to and become a part of the amount owed by the operator upon written notice to the operator, served personally or by mail.  
(Ord. 155A, passed 5-13-1993)

### **§ 33.11 REDETERMINATIONS.**

(A) Any person against whom a determination is made under § 33.10, or any person directly interested may petition for a redetermination and redemption and refund within the time required in § 33.10. If a petition for redetermination and refund is not filed within the time required in § 33.10, the determination becomes final at the expiration of the allowable time.

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

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

(D) The order of decision of the City Recorder/Manager upon a petition for redemption and refund becomes final ten days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the City Council within the ten days after service of such notice.

(E) No petition for redetermination of redemption and refund or appeal therefrom shall be

effective for any purpose unless the operator has first complied with the payment provisions herein.  
(Ord. 155A, passed 5-13-1993)

### § 33.12 SECURITY DEPOSIT.

(A) The City Recorder/Manager, whenever he or she deems it necessary to ensure the compliance with this subchapter, may require the operator subject thereto to deposit with him or her such security in the form of cash, bond or other security shall be fixed by the City Recorder/Manager but shall not be greater than twice the operator's estimated average monthly liability for the period for which he or she files returns, determined in such a manner as the City Recorder/Manager deems proper, or \$5,000, whichever amount is less. The operator has a right to appeal to the Transient Occupancy Tax Appeal Board any decision of the City Recorder/Manager made pursuant to § 33.15.

(B) At any time within three years after any tax, or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the City Recorder/Manager may bring any action in the courts of this state, or any other state of the United States in the name of the city to collect the amount delinquent together with penalties and interest.  
(Ord. 155A, passed 5-13-1993)

### § 33.13 REFUNDS.

(A) Whenever the amount of any tax, penalty, or interest has been paid more than once, or has been erroneously collected or received by the City Recorder/Manager, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the City Recorder/Manager within three years from the date of payment.

(B) If the claim is approved the excess amount collected or paid may be refunded the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his or her administrators, executors or assignees.

(C) All refunds shall be charged to the Transient Occupancy Tax Revenue Account of the city's General Fund.  
(Ord. 155A, passed 5-13-1993)

### § 33.14 RECORDS.

(A) *Records required from operators; form.*  
Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for three years after they come into being.

(B) *Examination of records: investigations.* The City Recorder/Manager may examine during normal business hours, the books, papers and accounting records relating to occupancy sales of any operator after notification to the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(C) *Confidential character of information obtained; disclosure unlawful.* It shall be unlawful for the City Recorder/Manager or any person having an administrative or clerical duty under the provisions of this subchapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and information and equipment of any person.

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

(2) The disclosure after the filing of a written request to that effect, to the taxpayer himself or herself, receivers, trustee, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax, or amount of tax require to be collected, or interest, and penalties; provided, however, that the City Attorney approves each such disclosure and that the City Recorder/Manager may refuse to make any disclosure referred to in this division (C) when in his

or her opinion the public interest would suffer thereby.  
(Ord. 155A, passed 5-13-1993) Penalty, see § 33.99

in addition

**§ 33.15 TRANSIENT OCCUPANCY TAX  
APPEAL BOARD; PROCEDURE.**

(A) A Transient Occupancy Tax Appeal Board is hereby created to be composed of members of the City Council.

(B) Four members of the Board shall constitute a quorum.

(C) The Board shall keep a record of its transactions and shall not, at any time, receive any compensation for their service on the Board.

(D) The Board shall have the power to:

(1) Hear and determine appeals of orders or decisions of the City Recorder/Manager made upon petitions for redetermination of tax. The Board may affirm, modify or reverse such orders or decision or dismiss the appeals as it may deem necessary. In the review of the City Recorder/Manager's decision or order, the committee may take such evidence and make such investigation as it may deem necessary and give notice of its determinations. Such determination shall become final ten days thereafter and shall thereupon become due and payable, subject to interest and penalties;

(2) Modify, affirm or disapprove all forms, rules, determinations and regulations prescribed by the City Recorder/Manager in the administration and enforcement of this subchapter;

(3) Make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax; and

(4) Revoke the business license issued to any operator for repeated failure to comply with this subchapter and order such revocation to continue until the operator has come into compliance and paid in full all taxes owing, including delinquency penalties, interest and costs. Such revocation may be

to any other penalties imposed by this subchapter.  
(Ord. 155A, passed 5-13-1993)

**§ 33.16 VIOLATIONS.**

(A) It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the City Recorder/Manager or to render a false or fraudulent return.

(B) No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this subchapter.  
(Ord. 155A, passed 5-13-1993) Penalty, see § 33.99

**§ 33.17 EFFECTIVE DATE.**

This subchapter shall become effective at 12:01 a.m. on July 1 and the first payment of taxes hereunder shall become delinquent unless paid on or prior to October 12, 1993.  
(Ord. 155A, passed 5-13-1993)

***CHARGE FOR SYSTEM DEVELOPMENT;  
CAPITAL IMPROVEMENTS***

**§ 33.30 PURPOSE.**

The purpose of the system development charge is to impose a portion of the cost of capital improvements for the sewer system on those developments that creates the need for or increase the demands on capital improvements.  
(Ord. 02-238, passed 8-8-2002)

**§ 33.31 SCOPE.**

The system development charge imposed by this subchapter is separate from and in addition to any

applicable connection charge, tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.  
(Ord. 02-238, passed 8-8-2002)

### § 33.32 DEFINITIONS.

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

**CAPITAL IMPROVEMENTS.** Facilities or assets used for:

- (1) Waste sewer collection, transmission, treatment disposal; and/or
- (2) Waste sewer pre-treatment storage.

**DEVELOPMENT.** Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land which increases usage of the sewer system.

**IMPROVEMENT FEE.** A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to § 33.33.

**LAND AREA.** The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

**OWNER.** The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real estate.

**PARCEL OF LAND.** A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinance.

**PERMITTEE.** The person to whom a building

permit, development permit, a permit or plan approval to connect the sewer or sewer system is issued.

### **QUALIFIED PUBLIC IMPROVEMENTS.**

- (1) A capital improvement that is:
  - (a) Required as a condition of development approval; and either
  - (b) Identified in the plan adopted pursuant to § 33.36; or
  - (c) Adopted into the plan pursuant to § 33.36 at any time prior to final completion and acceptance thereof; and either
  - (d) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
  - (e) 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 to the particular development project to which the improvement fee is related.

(2) For purposes of this definition, “contiguous” means in a public way which abuts the parcel.

**REIMBURSEMENT FEE.** A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to § 33.33.

### **SYSTEM DEVELOPMENT CHARGE.**

(1) A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement.

(2) **SYSTEM DEVELOPMENT CHARGE** includes that portion of a sewer system connection charge that is greater than the amount necessary to

reimburse the city for its average cost of inspecting and installing connections with sewer facilities.

(3) **SYSTEM DEVELOPMENT**

**CHARGE** does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment or the cost of complying with requirements or conditions imposed by a land use decision.

(Ord. 02-238, passed 8-8-2002)

**§ 33.33 SYSTEM DEVELOPMENT CHARGE ESTABLISHED.**

(A) A system development charges shall be established and may be revised by resolution of the Council.

(B) Unless otherwise exempted by the provisions of this subchapter or other local or state law, a system development charge is imposed upon all parcels of land within the city, and upon all lands outside the boundary of the city that connect to or otherwise use the storm sewers, or sewer facilities of the city.

(Ord. 02-238, passed 8-8-2002)

**§ 33.34 METHODOLOGY.**

(A) The methodology used to establish or modify the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

(B) The methodology used to establish or modify the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

(C) The methodology used to establish or modify

the improvement fee or the reimbursement fee, or both, shall be adopted by resolution of the Council. (Ord. 02-238, passed 8-8-2002)

**§ 33.35 AUTHORIZED EXPENDITURES.**

(A) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of the indebtedness.

(B) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements.

(1) An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities.

(2) The portion of the capital improvements funded by improvement fees must be related to demands created by development.

(C) A capital improvement being funded wholly or in part from revenues derived from the improve-ment fee shall be included in the plan adopted by the city pursuant to § 33.36.

(D) Notwithstanding divisions (A) and (B) above, system development charge revenues may be expended on the direct costs of complying with the provisions of this subchapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

(Ord. 02-238, passed 8-8-2002)

**§ 33.36 EXPENDITURE RESTRICTION AND COLLECTION OF CHARGES.**

(A) The system development charge is payable upon issuance of:

(1) A building permit;

- (2) A development permit; designee shall collect the applicable system
- (3) A development permit for development not requiring the issuance of a building permit;
- (4) A plumbing permit; and/or
- (5) A permit to connect to the sewer system;

(B) An owner of property shall have the option of payment at the time set forth herein above or upon the occupancy of the property, or upon the sale of the property, or within one year from the issuance of the date of the building permit, whichever occurs first.

(1) In the event that the owner of the property does not pay pursuant to divisions (B)(2)(a) through (B)(2)(f) below, the owner shall execute a lien in favor of the city for the amount owing. Said lien shall provide for payment in accordance with this division (B).

(2) The cost of lien preparation and recording shall be paid in advance by the owner.

(a) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(b) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

(c) If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

(d) If development is commenced or connection is made to the sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

(e) The City Recorder/Manager or

development charge when a permit that allows building or development of a parcel is issued or when a connection to the sewer system of the city is made.

(f) The City Recorder/Manager or designee shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for payment has been made.  
(Ord. 02-238, passed 8-8-2002)

**§ 33.37 DELINQUENT CHARGES; HEARING.**

(A) When, for any reason, the system development charge has not been paid, the City Recorder/Manager shall report to the Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due and the name of the owner.

(B) The City Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the City Recorder/Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least ten days before the date set for hearing.

(C) At the hearing, the Council may accept, reject or modify the determination of the City Recorder/Manager as set forth in the report.

(1) If the Council finds that a system development charge is unpaid and uncollected, it shall direct the City Recorder/Manager to docket the unpaid and uncollected system development charge in the lien docket.

(2) Upon completion of the docketing, the city shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10% and with the city's actual cost of serving notice of the hearing on the owners.

(3) The lien shall be enforceable in the



### § 33.38 EXEMPTIONS.

(A) Structures and uses established and legally existing on or before the adoption of the ordinance codified in this subchapter are exempt from a system development charge, except sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this division (A) shall pay the sewer charges pursuant to the terms of this subchapter upon the receipt of a permit to connect to the sewer system.

(B) Additions to single-family dwellings that do not constitute a dwelling as defined by State Uniform Building Codes are exempt from all portions of the system development charge.

(C) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.

(D) A project financed by city revenues is exempt from all portions of the system development charge.

(Ord. 02-238, passed 8-8-2002)

### § 33.39 CREDIT.

(A) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of this subchapter.

(1) The credit so computed shall not exceed the calculated system development charge.

(2) No refund shall be made on account of such credit.

(B) A credit shall be given to the permittee/developer for the cost of a qualified public improvement not located in whole or in part on or contiguous to the property that is subject of development approval, upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

(C) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property.

(1) The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this division (C).

(2) The credit shall not to exceed the improvement and receipt of written confirmation thereof from the City Recorder/Manager, or designee.

(D) The request for credit for a qualified public improvement shall be filed with the City Recorder/Manager, or designee, not later than 60 days after approval of the development by the city. The request shall include:

(1) A legal description of all land within the development;

(2) A legal description of any land proposed to be donated as part of the qualified public improvement;

(3) A written appraisal of the fair market value of donated lands, which are a part of the qualified public improvement. The appraisal shall be prepared by certified professional appraiser and based upon comparable sales of similar property between unrelated parties;

(4) A detailed written estimate of proposed construction costs for each qualified public improvement, prepared by a professional engineer. The estimate shall include separate costs for that portion of each improvement that exceeds the city's minimum standard facility size or capacity;

(5) If the qualified public improvement is not currently on the city's capital improvement plan, a statement requesting the addition of the improvement onto the plan shall be made in writing;

(6) The signatures of all legal owners of the development property together with the designation of whom is to receive any credits and the designated percentage for each, if more than one person or entity is designated;

(7) When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project;

(8) Notwithstanding divisions (D)(2), (D)(3) and (D)(5) above, when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, the reimbursement, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable;

(9) Credits shall not be transferable from one development to another;

(10) Credits shall be used within ten years from the date the credit is given;

(11) Where public improvement qualifies for

both credits for system development charges from the city, and reimbursement from such other property owners receiving service from the improvement pursuant to this subchapter, the developer shall only be entitled to a combined total redeemed credit and reimbursement amount not greater than the total qualified public improvement cost; and

(12) Where a public improvement qualifies for both credits pursuant to this section and reimbursement pursuant to this subchapter the city shall assume any right for reimbursement for any credits redeemed by a developer for that portion of the improvement up to and including the city standard for size of capacity.  
(Ord. 02-238, passed 8-8-2002)

#### § 33.40 NOTICE.

(A) The city shall maintain a list of persons who have made written request for notification prior to adoption or amendment of a methodology for any system development charge.

(1) Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to adopt or amend a system development charge.

(2) The methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge.

(3) The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.

(B) The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.  
(Ord. 02-238, passed 8-8-2002)

**§ 33.41 SEGREGATION AND USE OF REVENUE.**

(A) All funds derived from a particular type of system development charge is to be segregated by accounting practices from all other funds of the city. That portion of the development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in § 33.35(B).

(B) The City Recorder/Manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each account (Ord. 02-238, passed 8-8-2002)

**§ 33.42 APPEAL PROCEDURE.**

(A) A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Recorder/Manager describing with particularity the decision of the City Recorder/Manager and the expenditure from which the person appeals. An appeal of expenditure must be filed within two years of the date of the alleged improper expenditure.

(B) Appeals of any other decision required or permitted to be made to the City Recorder/Manager under this subchapter must be filed within ten years of the date of the decision.

(C) After providing notice to the appellant, the Council shall determine whether the City Recorder/Manager's decision or the expenditure is in accordance with this subchapter and the provisions of O.R.S. 223.297 to 223.314 and may affirm, modify or overrule the decisions. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

(D) A legal action challenging the methodology adopted by the Council shall not be filed later than 60 days after the adoption. (Ord. 02-238, passed 8-8-2002)

**§ 33.43 PROHIBITED CONNECTION.**

No person may connect to the sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved. (Ord. 02-238, passed 8-8-2002) Penalty, see § 33.99

**§ 33.44 CONSTRUCTION.**

The rules of statutory construction contained in O.R.S. Chapter 174 are adopted and by this reference made a part of this subchapter. (Ord. 02-238, passed 8-8-2002)

