

ORDINANCE NO. 2182

AN ORDINANCE AMENDING THE BEND CODE BY REPLACING CHAPTERS 2, 3 AND 4 WITH NEW TITLES 2, 3, 14 AND 15

Findings

- A. The City of Bend is in the process of reviewing and revising the entire Bend Code.
- B. While the review has been on a chapter-by-chapter basis, the existing Chapters 2 Local Improvements, 3 Utilities, and 4 Sanitation are interrelated and need reorganization.
- C. Staff has proposed a reorganization that would replace Chapters 2 through 4 with the following new titles: Title 2 Public Improvements, Title 3 Rights of Way and City Property, Title 14 Water and Title 15 Sewer. Council agrees that this reorganization improves the organization of the Bend Code.
- D. Resolution No. 2499 relates to trees, and trees are covered in the new Title 3 Rights of Way and City Property. The provisions of Resolution 2499 have never been fully implemented and are impractical given the City's existing resources.

Based on these findings

THE CITY OF BEND ORDAINS AS FOLLOWS:

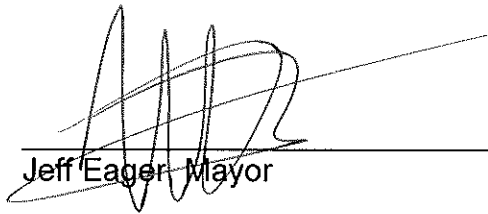
Section 1. The Bend Code is amended by deleting the existing Chapters 2 through 4 and adding the following new Titles: Title 2 Public Improvements, Title 3 Rights of Way and City Property, Title 14 Water and Title 15 Sewer, to read as shown in the attached Exhibit A.

Section 2. Resolution No. 2499 is repealed.

First Reading: April 4, 2012

Second Reading and Adoption by Roll Call Vote: April 18, 2012

YES: Tom Greene	NO: None
Scott Ramsay	
Mark Capell	
Jodie Barram	
Jim Clinton	
Kathie Eckman	
Mayor Jeff Eager	



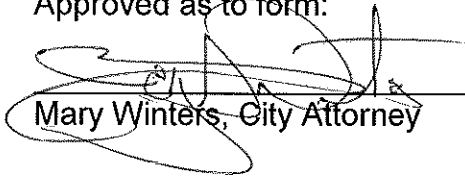
Jeff Eager, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



Mary Winters, City Attorney

EXHIBIT A

TITLE 2 PUBLIC IMPROVEMENTS

Chapter 2.10 Local Improvement Districts

2.10.005 Initiation of Local Improvement Districts

The Council on its own motion or on petition of the owners of at least half the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the Council in determining whether a local improvement district should be formed to pay all or part of proposed water, street, sanitary sewer, sidewalk, storm drain, and/or other public improvements. Only public improvements may be financed by local improvement districts. The City may charge a fee in an amount established by Council resolution for filing the petition. The fee shall cover the costs of receipt and processing of the petition and the initial Council action.

2.10.010 Preliminary Engineer's Report

The preliminary engineer's report shall contain:

- (1) A full description of the project including boundaries of the proposed district. The proposed district may differ from the area described in the initial petition and any changes in district boundaries do not invalidate the initial petition.
- (2) A description of each parcel of land specially benefited, including the name of the record owner of the parcel as listed in the County's tax records as of the date of the engineer's report.
- (3) An estimate of the probable cost of the project, including property acquisition, design, construction and administrative costs. The estimate shall include all costs assessable under Section 2.10.040.
- (4) A recommendation as to what portion of the total costs of the project should be paid by specifically benefited properties.
- (5) A recommendation of a method of assessment, together with an estimate of the cost per unit to specially benefited properties.
- (6) A recommendation whether to proceed with formation of the local improvement district.

2.10.015 Payment for Preliminary Engineer's Report

- (1) A petitioner may agree to pay the cost of the preliminary engineer's report and the notice of the hearing on district formation. A petitioner who agrees to pay these costs shall provide a deposit in the amount of the estimated cost before the City proceeds with the preliminary engineer's report.

- (2) If a petitioner pays the costs of a preliminary engineer's report and hearing notice, the petitioner shall not be reimbursed if the district is not formed or the improvements are not built.
- (3) If the district is formed and the improvements are built, the costs paid under this section shall be included in the costs assessed under Section 2.10.040, and the petitioner shall be entitled to a credit on the assessment imposed on petitioner's property in the amount paid by petitioner under subsection (1). If more than one petitioner pays the costs, the credit shall be spread among properties owned by those who paid for the report and notice.

2.10.020 Notice of Hearing on District Formation

- (1) For projects that involve improvements other than sidewalks and associated curbs, unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the City shall mail notice to property owners of a Council hearing on the proposed district at least 10 days prior to the hearing. Notice will be mailed to the property owners' addresses as listed in the county tax records as of the date of the notice. The City may provide additional notice if determined to be in the interest of property owners.
- (2) The notice shall contain:
 - (A) A general description of the proposed local improvement(s) and the boundaries of the district, which shall include all specially benefited properties and no properties that are not specially benefited.
 - (B) An estimate of the total cost of the improvement.
 - (C) The date, time, and place of the public hearing, and the deadline to submit written objections before the hearing.
 - (D) A statement of the place where the preliminary engineer's report and other information on the project may be obtained.
 - (E) A description of the proposed method of assessment and allocation of costs.
 - (F) A statement that the purpose of the hearing is to hear comments and remonstrances and that all comments and remonstrances must be submitted prior to the close of the hearing.
 - (G) A statement that the Council may modify the proposed improvement(s) and modify the proposed boundaries of the district.
 - (H) A statement that the costs, proposed allocation of costs, and proposed method of assessment are estimates or proposals only and that the actual assessment will be based on actual costs and on a method of assessment to be determined only after the construction of the local improvement(s) is completed.

2.10.025 Hearing on District Formation

- (1) For improvements other than sidewalk improvements, the Council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances.
- (2) If property owners owning two-thirds of the property area within the district to be specially assessed remonstrate against the improvement, the Council shall not proceed with forming the district and financing the improvement by special assessment. This provision shall not apply if the only improvements to be constructed are sidewalks or if the Council unanimously declares the improvement to be needed because of an emergency or public health concern. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.
- (3) All remonstrances must be in writing and filed with the City Recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.
- (4) If insufficient remonstrances are filed to prevent the formation of the local improvement district, the Council shall have discretion whether or not to form the district and proceed with the public improvement.
- (5) Based on testimony at the hearing, the Council may modify the scope of the improvements and/or the district boundary. The Council may use any reasonable method of determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by Council include additional property or result in a likely increase in assessments on any property, the City shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.
- (6) A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution.
- (7) After formation of the local improvement district the City may enter a notice of potential future lien in the City lien docket.

2.10.026 Notice of District Formation

Within 10 days after the effective date of the resolution forming local improvement district, the City shall mail to property owners within the district a notice that Council has adopted a resolution forming the local improvement district. Notice will be mailed to property owners' addresses listed in the county tax records as of the date of the notice.

- (2) The notice shall contain:
 - (A) A copy of Council resolution forming the local improvement district.
 - (B) Estimated construction start and end date.

- (D) A statement that the City Engineer will be developing a final plan and specifications.

2.10.030 Final Plan and Specifications

- (1) After a Council decision to form the district and proceed with the local improvement(s), the City Engineer shall be responsible for acquisition of necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.
- (2) After developing the final plan and specifications, the City Engineer shall prepare a new estimate of costs. If the City Engineer determines that the new estimate significantly exceeds the estimate provided to the Council at the time of district formation or that there are significant changes in the project, a supplemental engineer's report shall be prepared and submitted to the Council which shall hold a hearing on the supplemental engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the supplemental engineer's report. The Council shall follow the same procedure and standards applicable to the original hearing.

2.10.035 Construction

- (1) Construction work on the local improvement(s) may be by the City, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the City's public contracting rules.
- (2) Construction may proceed after the development of the final plan and specification if the final plan and specifications do not significantly differ from the improvements authorized by the Council after the initial hearing. If an additional hearing is held, construction may proceed after a Council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.
- (3) The City shall make reasonable efforts to inform property owners of any delays in the construction schedule.

2.10.040 Costs Included in Assessment

The costs and expenses of public improvements that may be assessed against specially benefited properties include but are not limited to:

- (1) The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.
- (2) Engineering and survey costs, including the preliminary engineering report and final plans and specifications.
- (3) Costs of construction and installation of improvements.

- (4) Advertising, legal, administrative, survey, engineering, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.
- (5) Financing costs, including interest charges and debt issue costs.
- (6) Attorney fees.
- (7) Any other necessary expenses.

Private improvements (sewer and water laterals that are the property of the customer) may not be included in a local improvement district project.

2.10.045 Method of Assessment

- (1) After final acceptance of the public improvements by the City, the City shall prepare a final engineer's report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The City shall prepare the proposed assessments for each lot within the improvement district. The City shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.
- (2) The City will schedule a Council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:
 - (A) The name of the owner and a description of the property to be assessed.
 - (B) The amount of the assessment.
 - (C) The proposed allocation and method of assessment.
 - (D) The date, time and place of the Council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.
 - (E) A statement that the assessment as stated in the notice or as modified by the Council after the hearing will be levied by the Council, charged against the property, and be due and payable.
- (3) Any mistake, error, omission, or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.
- (4) The Council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the Council shall determine the amount of assessment to be charged against each property within the district

according to the special benefits to each property from the improvement(s). The Council, in adopting a method of assessment of the costs of the improvement(s), may use any method of apportioning the sum to be assessed that the Council determines to be just and reasonable among the properties in the local improvement district. The final decision spreading the assessment shall be by resolution.

2.10.050 Notice of Assessment

Within 10 business days after the effective date of the resolution spreading the assessments, the City shall send by first-class mail to the owner of the assessed property a notice containing the following information:

- (1) The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment, and a description of the property assessed.
- (2) A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this Chapter.
- (3) A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure. Supplementary notice of assessment may also be published or posted by the City.

2.10.055 Payment

- (1) Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of nine percent per year. The City may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.
- (2) Any time within 30 days after the notice of assessment is mailed, the owner of the property may apply to pay any assessment in excess of \$500 in equal installments, with the first payment to be paid within 180 days of the application for installment or as determined by the City's financing plan. . The City shall allow payments to be made over 10 years, and may, in the City's discretion, allow payments to be made over a longer period of time, not to exceed 30 years. The application shall state that the applicant:
 - (A) Waives all irregularities or defects, jurisdictional, or otherwise, in any way relating to the assessment.
 - (B) Understands the terms and conditions of the City's payment policies including the penalties for nonpayment.
- (3) On receipt of an application for payment in installments, the City shall determine whether the City will finance the payments internally, or issue bonds, or obtain a

loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus one and one half to two percent. If the City finances the payments internally, the interest rate shall be at a rate appropriate for 10 to 30 year loans based on the Bloomberg National Average Mortgage rates. The City shall then notify the property owner of the payment amounts and due dates.

- (4) The entire amount of principal and accrued interest shall be payable on any transfer for consideration of the specially assessed property or change in its boundaries.

2.10.060 Lien and Foreclosure

- (1) The City shall enter in the City lien docket:
 - (A) A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;
 - (B) A description of the improvement;
 - (C) The names of the owners; and
 - (D) The date of the assessment resolution.
- (2) On entry in the lien docket, the amount entered shall become a lien and charge upon the properties that have been assessed for such improvement.
- (3) All assessments liens of the City shall be superior and prior to all other liens or encumbrances on property.
- (4) The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

2.10.065 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the Finance Director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the Council for an amendment of the assessment resolution. On amendment of the resolution, the Finance Director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

2.10.070 Abandonment of Proceedings

The Council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

2.10.075 Division of Assessments

Whenever property has been assessed in an entire tract, parcel or acreage and subsequently divided into smaller lots or parcels, any person desiring to have the total

assessment divided among the smaller lots or parcels may apply to the City for a division of the assessment and a determination of the amount due on each portion. All costs of any division shall be paid by the person applying for the division. Division of assessment shall be solely at the discretion of the City, and on terms and conditions required by the City. Divisions shall be allowed only for properties on which payment is current. No division of an assessment shall become effective until all affected owners have executed an agreement acknowledging the validity of the assessments as divided and waiving any and all errors and irregularities in the proceedings.

2.10.080 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The Council shall have the authority to remedy or correct any matter by suitable proceedings and action.

2.10.085 Reassessment

Whenever any assessment or reassessment is set aside or its enforcement restrained by any court with jurisdiction or when the Council is in doubt as to the validity of the assessment or reassessment, the Council may make a reassessment in the manner provided by the state law or may follow the procedure applicable to an original assessment, but shall not be required to repeat any portion of the procedure properly completed.

2.10.090 Review

Actions of the Council under this Chapter are reviewable only by writ of review.

2.10.095 Interpretation and Coordination with State Law

The provisions of this Chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the City may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the City shall comply with state statutes.

2.10.100 Sidewalk Public Improvements

The City may follow the process and standards of this Chapter for local improvement districts to construct sidewalks, but the remonstrance provisions do not apply to local improvement districts for sidewalks.

Chapter 2.20 REIMBURSEMENT DISTRICTS

2.20.005 Definitions

The following definitions apply in this Chapter:

- (1) "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of street, water or sewer improvements and includes property which has the opportunity to utilize the improvements.
- (2) "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement. The term Reimbursement Fee does not include any Local Improvement District Assessment or any System Development Charge established by Oregon Law.

2.20.010 Application

- (1) The City, and any person who builds a street, water or sewer improvement to City standards and specifications and conveys the improvements to the City or the public may by written application request that the City establish a reimbursement district covering properties that will be benefitted by the improvements. The street, water and sewer improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval and must be available to provide service to property other than property owned by the applicant. Examples include but shall not be limited to full street improvements instead of half street improvements, off site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review, including the City Engineer's Report, and notice required by this Chapter.
- (2) The application must be filed with the City before improvements are constructed.
- (3) The application shall include the following:
 - (A) A description of the location, type, size and cost of the public improvement to be eligible for reimbursement.
 - (B) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.
 - (C) The estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the City Engineer. If the project is eligible for SDC credit, the anticipated amount of SDC credit shall be stated.
 - (D) The estimated date of completion of the public improvements.
 - (E) Applicant may request a discretionary annual fee adjustment, which, if granted, will be administered pursuant to Section 2.20.065.

- (F) An acknowledgement by the applicant that the applicant agrees to indemnify, defend and hold harmless the City, its elected officials, appointed officials, employees and agents from any and all claims that may arise from the creation or administration of the district. This acknowledgement shall release the City, its elected officials, appointed officials, employees and agents from any and all claims that reimbursements fees were improperly collected, collected in the wrong amount, or not collected at all, for any reason, including negligence on the part of the City, its elected officials, appointed officials, employees and agents. The applicant shall acknowledge that the applicant accepts all risk that reimbursement will not occur, or will not occur in the amount expected by the applicant.

2.20.015 City Engineer's Report

- (1) The City Engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Engineer may require the submittal of other relevant information from the applicant in order to assist in the evaluation. The Engineer shall prepare a written report for the City Council, considering and making recommendations concerning the following factors:
 - (A) Whether the applicant will finance some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;
 - (B) The area to be included in the reimbursement district;
 - (C) The estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;
 - (D) A methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the reimbursement fee to property which may, with City approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the City Engineer. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);
 - (E) The amount to be charged by the City for administration of the district by the City. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. If the applicant is other than the City, the administration fee is due and payable to the City at the time the agreement in Section 7.2 is signed.

If the City is the applicant, the administration fee shall be included in the reimbursement fee and is due and payable at the time there is an obligation to pay the reimbursement fee as required by Section 12.

- (F) The period of time that the right to reimbursement exists, if the period is less than ten years.

2.20.020 Amount of Reimbursement

- (1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, engineering, and right of way acquired as part of the project. Engineering shall include surveying and inspection and shall not exceed 13.5% of eligible construction cost. Right of way acquisition costs are limited to the reasonable market value of land or easements purchased by the applicant from a third party for the improvements.
- (2) No reimbursement shall be allowed for financing costs, permits or fees required for construction permits, land or easements dedicated by an applicant other than the City, costs which are eligible for systems development charge credits, project management fees or any costs which cannot be clearly documented.
- (3) No reimbursement shall be allowed for construction costs that occur prior to the formation date of the reimbursement district.
- (4) A reimbursement fee shall be computed by the City for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

2.20.025 Public Hearing

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

2.20.030 Notice of Public Hearing

Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this Chapter, the applicant and all owners of property within the proposed district shall be notified of the hearing. Notice shall be accomplished by either mail or personal service. Mailed notice shall be mailed at least 13 days before the hearing. Notice shall be deemed effective on the date that the notice is mailed. Failure of the applicant or any affected property owner to receive notice shall not invalidate or otherwise affect any reimbursement district resolution or the City Council's authority.

2.20.035 City Council Action

- (1) After the public hearing, the City Council shall approve, reject or modify the recommendations contained in the City Engineer's report. The City Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the City Engineer's report as approved or modified.
- (2) When the applicant is other than the City, the resolution shall instruct the City Manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The agreement shall be contingent upon the improvements being accepted by the City. The agreement, at a minimum, shall contain the following provisions:
 - (A) The public improvement(s) shall meet all applicable City standards.
 - (B) The estimated total amount of potential reimbursement to the applicant.
 - (C) The applicant shall defend, indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the district. The applicant shall acknowledge that the City is not obligated to collect the reimbursement fee from affected property owners, and that the applicant assumes all risk of every kind that the amount reimbursed may not be as much as anticipated, or that any particular reimbursement fee may not be collected by the City. The applicant has a private cause of action for collection of a Reimbursement Fee against any person obligated to pay a Reimbursement Fee, and the applicant shall bear the entire cost of an action to collect the Reimbursement Fee, without any right to contribution by the City.
 - (D) Other provisions that the Council determines appropriate to carry out the provisions of this Chapter.
- (3) If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.
- (4) The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water or sewer improvement within the reimbursement district.

2.20.040 Notice of Adoption of Resolution

The City shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee.

2.20.045 Recordation

The City shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the County Recorder so as to provide notice to potential purchasers of property within the district. The City shall also record the obligation of each benefited property to pay a reimbursement fee in the City's lien docket. The recording shall not create a lien. Failure to record shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

2.20.050 Contesting the Reimbursement District

No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after 60 days following adoption of a resolution establishing a reimbursement district. Legal challenge shall only be by writ of review.

2.20.055 Final Public Hearing

- (1) Within three months after completion and acceptance of the improvements, the applicant shall submit to the City Engineer the actual cost of the improvements as evidenced by receipts, invoices, canceled checks and other similar documents. The City Engineer shall review the actual costs and shall prepare a written report for the City Council.
- (2) The final cost shall not exceed by more than 10% the cost estimated at the time of reimbursement district formation unless an exception is approved by the City Council. An exception may be approved only if the applicant can show legitimate circumstances beyond the control of the applicant that caused the cost increase.
- (3) Within a reasonable time after the City Engineer has completed the post-acceptance report, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on any changes from the original report.
- (4) Failure to provide the documentation required by this section shall result in the automatic lapse of any resolution adopted by the City Council pursuant to Section 2.20.035. Following the final public hearing provided for herein, and subject to the limitations provided for herein, the City Council shall have the authority to approve, rescind, or modify the reimbursement district.

2.20.060 Obligation to Pay Reimbursement Fee

- (1) The applicant for a City approval related to property within any reimbursement district shall pay the City, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the City for any of the following activities:
 - (A) A building permit for a new building;

- (B) Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building, which exceed twenty-five percent (25%) of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;
 - (C) Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under City standards in effect at the time of permit application;
 - (D) Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;
 - (E) Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement;
 - (F) Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.
 - (G) Approval of a land partition or final subdivision plat.
- (2) The City's determination of who shall pay the reimbursement fee is final. Neither the City nor any elected official, appointed official, agent or employee of the City shall be liable for payment of any reimbursement fee as a result of this determination, or as a result of failure, for any reason, of the City to collect a Reimbursement Fee.
- (3) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this Chapter is intended to modify or limit the authority of the City to provide or require access management.
- (4) No person shall be required to pay the reimbursement fee on an application or on property for which the reimbursement fee has been previously paid. Reimbursement fee must be paid in full when a permit or land division approval, including a final subdivision plat, is issued or approved.

- (5) The City, Deschutes County, the State of Oregon and the United States are not required to pay a Reimbursement Fee.
- (6) The right of reimbursement shall not extend beyond ten years from the district formation date. The applicant solely and exclusively bears the risk that the City may not collect from benefited property owners their respective share of the cost of the improvement, and that the total amount collected may be less than anticipated. Further the applicant acknowledges that by utilizing the procedures of this ordinance that the City shall be under no obligation to institute legal proceedings to collect unpaid amounts that may be due to the applicant. The applicant must institute and pay for such legal proceedings, and the City will not be obligated to share or pay the litigation costs associated with such proceedings.
- (7) The applicant shall warrant the improvement against defects in materials or quality of construction for a period of one year from the date of acceptance.

2.20.065 Annual Fee Adjustment

- (1) The City Council may grant an annual fee adjustment at the time of application for formation of a reimbursement district.
- (2) If granted, an annual fee adjustment shall be applied to the reimbursement fee beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment. The annual fee adjustment shall be fixed and computed against the reimbursement fee as simple interest and will not compound. The amount of the fee adjustment shall be determined at the time that a district is formed and shall be the same each year. The interest rate will be determined by the Council on recommendation of the Finance Director.

2.20.070 Administration

- (1) The right of reimbursement may be transferred with written approval from the City.
- (2) The City shall establish separate accounts for each reimbursement district. Payments collected during a calendar year shall be paid to the person entitled to reimbursement by January 31 of the following year. No interest earnings shall accrue or be paid on payments collected.
- (3) The reimbursement fee is in lieu of a local improvement district for the improvements installed pursuant to the reimbursement district agreement. The reimbursement fee is not intended to replace or limit any other fee or charge collected by the City.

Chapter 2.30 ECONOMIC IMPROVEMENT DISTRICTS

2.30.010 Purpose

The purpose of this chapter is to implement ORS 223.112 through 223.161, which authorize cities to create economic improvement districts and to impose assessments or to impose supplemental business license fees to support economic improvement projects within those districts. This chapter shall be interpreted to be consistent with ORS 223.112 through 223.161, and the City shall comply with those statutes.

2.30.020 Initiation of Economic Improvement District

The City Council may consider an ordinance to create an economic improvement district and impose assessments on its own motion or at the request of any person, entity, association, or City staff. The ordinance shall describe the economic improvement projects, contain a cost estimate and proposed formula for apportioning costs, describe the boundaries of the district and specify the number of years that assessments will be levied. The ordinance shall require notice to affected property owners of the time and place of a public hearing, which is to be held not sooner than 30 days after mailing or delivery of the notice. The ordinance shall provide that the assessments will not be made and the economic improvement district terminated when written objections are received at the public hearing from owners of property upon which more than 33 percent of the total amount of assessments is levied.

2.30.030 Public Hearings and Assessments

(1) A public hearing shall be held on the proposed economic improvement district. If the City Council decides to proceed with the economic improvement district, the Council shall determine whether the property benefitted shall bear all or a portion of the costs. The Council shall determine, based on the actual or estimated cost of the economic improvement projects, the amount of assessment on each lot in the district. The City shall then prepare the proposed assessment for each lot in the district. Notice of the proposed assessment for each property shall be mailed or personally delivered to the owner of the property to be assessed. The notice shall state the time and place of a public hearing at which affected property owners may appear to support or object to the proposed assessment.

(2) The hearing on proposed assessments shall not be held sooner than 30 days after the mailing or personal delivery of the notices.

(3) At the hearing on assessments, the Council shall consider objections and may correct, modify, or revise the proposed assessments.

2.30.050 City Lien Docket

The City shall enter each final assessment in the City lien docket. Unpaid assessments for economic improvements may be collected in the same manner as unpaid assessments for local improvements.

2.30.060 Imposition of Additional Business License Fee

As an alternative to imposing assessments on real property to pay for economic improvement projects, the Council, on its own motion or after receiving a petition for the formation of an economic improvement district signed by 33 percent or more of persons conducting business within the proposed district, may enact an ordinance establishing a procedure to be followed in imposing a business license fee surcharge to raise revenue for the cost of an economic improvement. An economic improvement district formed under this section shall include only areas zoned for commercial or industrial use. The business license fee surcharge shall be only for economic improvement projects that primarily benefit persons conducting business within the economic improvement district. An ordinance adopted under this section shall:

- (1) Describe the economic improvement project to be undertaken or constructed.
- (2) Contain a preliminary estimate of the probable cost of the economic improvement.
- (3) Describe the boundaries of the district in which property will be assessed.
- (4) Specify the number of years, to a maximum of five, in which business license fees for the economic improvement will be imposed.
- (5) Contain provision for notices to be mailed or delivered personally to affected persons that announce the intention of the council to construct or undertake the economic improvement project and to impose a business license fee upon persons conducting business within the district for a part or all of the cost. The notice shall state the time and place of the public hearing and the amount of the business license fee.
- (6) Provide for a hearing not sooner than 30 days after the mailing or delivery of notices to affected persons at which the persons may appear to support or object to the proposed improvement and business license fee.
- (7) Provide that if, after the hearing, the council determines that the economic improvement shall be made, the council shall determine whether the businesses benefited shall bear all or a portion of the cost and shall determine, based on the actual or estimated cost of the economic improvement, the amount of the business license fee.

- (8) Provide that the council shall consider the objections of persons subject to the proposed business license fee and may adopt, correct, modify or revise the proposed business license fee.
- (9) Provide that the business license fee will not be imposed and the economic improvement project terminated when written objections are received at the public hearing from more than 33 percent of persons conducting business within the economic improvement district who will be subject to the proposed business license fee.

2.30.070 Advisory Committee

An ordinance adopted under Section 2.20.060 may provide for creation of an advisory committee to develop a plan and to allocate expenditure of moneys for economic improvement activities. If an advisory committee is created, the council shall appoint persons conducting business within the economic improvement district to the advisory committee. An existing association of persons conducting business within an economic improvement district may enter into an agreement with the city to provide the economic improvement activities.

2.30.080 Extension of Business Licensing Period

The Council may extend the term of a business license surcharge under Section 2.30.060 by an ordinance that grants to persons conducting business in the district the same notice and right of remonstrance provided for initial establishment of the district and business license surcharge.

2.30.090 Expenditure of Assessment and Business License Revenues

All proceeds from assessments or business license surcharges may be spent only on for the purposes described in the ordinance authorizing the assessment or business license surcharge.

TITLE 3 – RIGHTS OF WAY AND CITY PROPERTY

CHAPTER 3.10 PUBLIC WORKS STANDARDS

3.10. 010 Public Works Standards

- (1) The City of Bend adopts the City of Bend Standards and Specifications dated July 1, 2011. All public works and public improvements, including but not limited to all portions of the City's street, sanitary sewer, storm sewer, and water systems, and any other construction within City rights of way shall be designed and constructed in accordance with the City of Bend Standards and Specifications. The requirement to comply with the City of Bend Standards and Specifications applies to improvements constructed or contracted for by the City

and to improvements constructed by or for private developers. The City may impose additional or different standards to cover situations not expressly addressed by the City of Bend Standards and Specifications or to account for unique conditions. A copy of the City of Bend Standards and Specifications is available at City Hall and at the Public Works Department. The City of Bend Standards and Specifications may be amended as provided in subsections (2) and (3) of this section.

- (2) The City Manager may amend technical provisions and standards of the City of Bend Standards and Specifications. Public notice of technical amendments shall be posted in City Hall 30 days prior to the effective date of the amendments.
- (3) Any provision of the City of Bend Standards and Specifications may be amended by resolution of the City Council.
- (4) The City Manager is authorized to enforce all the provisions of the City of Bend Standards and Specifications. The City Manager shall have the power to issue written and oral interpretations of the City of Bend Standards and Specifications and to adopt and enforce administrative procedures in order to clarify the application of the City of Bend Standards and Specifications. The City Manager is authorized to issue Stop Work Orders as needed in the enforcement of these standards. The City Manager may approve deviations from the City of Bend Standards and Specifications based on written findings documenting the need for the deviation.
- (5) Any construction in violation of the City of Bend Standards and Specifications shall constitute a Class A civil infraction. Each day that a violation exists is a separate infraction. For purposes of this section, defects in design or construction that are corrected within the time established for correction by the City shall not constitute a violation. Construction in accordance with a City-approved deviation from the standards is not a violation of the City of Bend Standards and Specifications.
- (6) Any uncorrected violation of the City of Bend Standards and Specifications shall constitute a nuisance and may be abated as provided in this Code.
- (7) The City Manager may delegate the authority provided in this Section.

Chapter 3.20 UTILITY LICENSE FEE AND USE OF RIGHTS OF WAY

3.20.010 Definitions

The following definitions apply in this Chapter.

- (1) Gross Operating Revenue: Except as otherwise provided in Subsection (A), "Gross Operating Revenue" means any revenue received from sources within the City limits by the utility; including revenue from the use, rental or lease of operating facilities of the utility and from the provision of services by the utility. There shall be no deduction for the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery cost, taxes or other expense. Gross revenue does not include revenue paid directly by the United States of America or its agencies.
 - (A) To the extent that the City's authority to tax or impose a fee on gross revenues of an entity is limited by ORS 221.410 through 221.655, the City shall apply the statutory limitations to the definition of "gross revenues."
 - (B) Non-profit mutual or cooperative associations providing electric power to their members may deduct the cost of power from gross revenues.
- (2) "Utility" means any entity, including cooperatives, that supplies electrical energy, water, gas, heat, communications including cable or sewer services by using facilities in rights of way.

3.20.020 Fees and Payment

- (1) Utilities with facilities in rights of way shall pay the City a utility license fee based on a percentage of their gross operating revenue as follows:
 - (A) Utilities subject to Section 3.20.005(1)(A): 7.0%
 - (B) Natural gas utilities: 4.5%
 - (B) Water and sewer utilities: 3.0%
 - (C) All other utilities: 5.0%
- (2) Utilities that pay a franchise fee may deduct the amount of the franchise fee payments from the amount due for the utility license fee.

3.20.040 Records and Reporting

- (1) Each utility subject to this Chapter shall:

- (A) File within 35 days of the end of each month a report of the gross revenues of the utility, accompanied by payment of the required fee.
 - (B) Maintain records that accurately reflect the amount of gross operating revenue for at least 7 years.
- (2) The City may conduct an investigation into the accuracy of the revenues listed in the revenue report. The utility shall make available for investigation all records and books of the company for verification of the reports of the company and the fees paid by the company.
 - (3) If the City finds that the license fee paid is insufficient, the City shall send a statement to the licensee showing the amount underpaid and demanding payment of that amount within ten days of the date of the statement. If the City determines that a utility has overpaid its license fee, the City shall refund the amount overpaid to the utility.
 - (4) A utility may appeal the City's demand for payment to the City Council. The appeal must be in writing and specify the grounds for the appeal. The Council will hold a hearing on the appeal. If the Council determines that the utility is required to pay any additional amount, the utility shall pay the amount owing within 24 hours of the Council's decision.

3.20.050 Use of Rights of Way

- (1) Utilities that use public rights-of-way within the City shall do so in a manner that does not interfere with the use of the right-of-way as a street, road, alley, bike path or sidewalk, except as specifically permitted by the City.
- (2) The City may require a utility, at the utility's expense, to change the location of or to remove any pole, conduit, line, structure or facility within the public right of way when the change or removal is in the public interest. If the utility refuses to make a change requested by the City, the City may make the change and the utility shall reimburse the City for the cost of making the change.
- (3) All utilities must comply with all provisions of state and local law concerning their use of public rights-of-way and the City of Bend Standards and Specifications.

3.20.060 Penalties

- (1) The City shall assess a late penalty of one percent of the gross revenues upon which the license fee is based for failure to timely pay the license fee. The penalty shall be doubled for every month that the fee remains delinquent.

(2) Violations of this Chapter are a Class "A" civil infraction, and each day a violation remains uncured is a separate violation.

CHAPTER 3.30 SIDEWALKS

3.30.010 Definitions

The following definitions apply in this Chapter:

- (1) Driveway approach is the area or improvement between an improved street and a property that provides vehicular access from the street to a driveway or parking area on the property.
- (2) Sidewalk means the portion of the right of way intended for the use of pedestrians and improved by surfacing, including the curb if the sidewalk abuts the curb.

3.30.020 Sidewalk Maintenance and Liability

Property owners shall maintain sidewalks adjacent to their property in good repair and unobstructed. Property owners are liable for personal injury or property damage arising from the condition of the adjacent sidewalk. If the City is required to pay damages for personal injury or property damage relating to the condition of a sidewalk, the adjacent property owner shall compensate the City for the full amount of the damages paid and the City's legal fees. The City may take legal action in a court of competent jurisdiction to enforce the provisions of this section.

3.30.030 Curb, Sidewalk and Driveway Approach Construction and Repair

The City Council may order adjacent property owners to construct, alter, repair or remove curbs or sidewalks or driveway approaches. The City will provide written notice to the adjacent property owner, giving the property owner at least 30 days to complete the work. The time period may be shortened if needed to remove a safety hazard. The notice shall state that the City will perform the required work if not timely completed by the property owner and impose the cost of the City's work, including administrative costs, as a lien on the adjacent property.

CHAPTER 3.40 RIGHT OF WAY PERMITS

3.40.005 Permit Requirement

- (1) No person other than the City and its agents may remove, alter, or construct any curb, sidewalk, driveway approach, gutter, pavement, or other improvement in any public right of way or property owned or controlled by the City without a City Right of Way Permit.

- (2) A Right of Way Permit will be issued if the proposed improvement complies with this Code, the City of Bend Design Standards and Construction Specifications, and the Bend Development Code.
- (3) A separate Lane Closure Permit will be required when the work will impact pedestrian or vehicular traffic.

3.40.010 Applications

- (1) Right of way permit applications must be submitted on City forms.
- (2) The application shall include the applicant's name and address, the date the work is to start, the date the work is to be completed, the location of the work, the nature of the street involved, the purpose of the work and the size and nature of the work.
- (3) The City may require the applicant to provide a performance bond or equivalent security in an amount sufficient to protect to ensure completion of the work and restoration of the right of way. If required, the security must remain in effect for at least two years after acceptance of the work. The applicant will be responsible for the work for a period of two years.
- (4) The application shall be accompanied by the permit fee in the amount established by Council resolution unless prohibited by a franchise ordinance or agreement or State law.
- (5) The applicant must provide a certificate of insurance showing liability insurance with policy limits at least equal to the City's tort liability limits. The certificate of insurance must list the City as an additional insured.
- (6) The applicant must agree to indemnify the City as to liability of any kind resulting from or in connection with the permitted activities. The permittee is responsible for injury to any person or property resulting from the permitted excavation, construction or related work.

3.40.015 Permitted Work

The City may issue the permit if a complete application is received and the work will comply with all applicable laws and regulations, including the City's standards and specifications. The permit may contain conditions or restrictions, including but not limited to the following:

- (1) Requiring that access to fire hydrants be available at all times.
- (2) Requiring that the actual work be confined to the hours of specific hours (typically 7:00 a.m. to 9:00 p.m.) or to certain days.

- (3) Setting forth the maximum lengths of breaks or excavation to be open at any one time.
- (4) Requiring that access to driveways be maintained.
- (5) Requiring that the permittee reimburse the City for the cost of relocating or reestablishing City monuments, and the giving of notice where the work will interfere with monuments.
- (6) Requiring that provision be made for traffic operations and safety.
- (7) Relating to the care and disposition of excavated material during construction.
- (8) Making provision for water courses during excavation.
- (9) Setting forth minimum or maximum depths of excavation or structures.
- (10) Providing for control of noise, dust, and debris during excavation.
- (11) Prescribing acceptable methods and materials for securing proper backfill and pavement resurfacing, including temporary surfacing if necessary.

3.40.020 Conduct of Work

- (1) Work under the permit shall be done in conformity with this Code, the City's standards and specifications, and the permit. The work shall be performed without delay. The work shall not interfere with access to fire hydrants or with City or public utilities.
- (2) On completion of the work, any excavation shall be filled, compacted, and the street surface restored to as good or better condition than before the work and in conformity with City standards.
- (3) Cold-mix asphalt patching will only be allowed as a temporary measure during adverse weather conditions, and the permanent patching shall be placed as soon as weather permits.
- (4) Any person who has made an excavation in a street shall maintain the restored street surface according to City standards for two years from the date of restoration.
- (5) Traffic signs or signals or other signs shall be returned to their prior location and condition, unless otherwise directed.

3.40.025 Inspection and Maintenance

The permittee shall notify the City within 48 hours after completion of the work. The City shall inspect the work and require correction of any deficiencies. If no deficiencies are detected the City will accept the work. The permittee shall be required to maintain the area in good condition for a period of two years from acceptance and shall provide security in a form acceptable to the City to cover any defects discovered in that two year period.

3.40.030 Compliance

The City may revoke a permit and issue a stop work order if the permittee fails to comply with the permit. All permits shall be deemed to contain a provision that the work must be consistent with the approved application and plans.

3.40.035 Barricades

The permittee shall provide temporary traffic barricades to protect from risks associated with obstructions or excavations. The barricades shall have appropriate lighting.

3.40.040 Utilities

Before starting work the permittee shall provide written notice to all public utilities that have or may have facilities in the affected area. If the work includes the placement of utility lines and facilities, the permittee will provide "as-built" drawings to the City.

3.40.045 Emergencies

Excavations in rights of way may proceed in case of an emergency. The permit must be applied for within 4 City business hours.

Chapter 3.50 Revocable Right of Way Permits

3.50.010 Permit Required For Use or Closure of Rights of Way

Except as otherwise authorized by this Code, no person other than the City may place any landscaping material, fill, rocks, goods, structures or any other material in any right of way, or close or reserve for exclusive use, any portion of any right of way without a permit issued by the City. Permit issued under this section shall be revocable and may contain conditions. The City may charge a fee in an amount set by Council resolution for a revocable permit to place materials in rights of way or to close or reserve rights of way for exclusive use. Any closure shall be for a specified period of time.

CHAPTER 3.60 TREES ON CITY PROPERTY AND PUBLIC RIGHTS-OF-WAY

3.60.010 Purpose

The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest and to provide for the general welfare of Bend's citizens by managing, conserving and enhancing the existing and future trees located on city property; enhancing the appearance of the City; and providing ongoing education regarding the preservation, health and benefits of trees and Bend's urban forest.

3.60.020 Definitions

The following definitions apply in this Chapter.

City Property – Real property owned or controlled by the City, including rights of way administered by the City.

Crown – The leaves and branches of a tree from the lowest branch on the trunk to the top of the tree.

Damage – Injury to a tree that compromises its health or longevity, or causes its death, including direct or indirect injury caused by insect, disease, human or animal.

DBH – Diameter measured at a point 4.5 feet above ground level.

Hazardous Tree - A tree or tree part that has a high potential to fail and cause damage or injury to people or property.

Major Pruning – The removal of over 20% of a tree's crown.

Pruning – The selective removal of plant parts to meet specific goals and objectives.

Topping – Cutting a stem more than 2 years old at an indiscriminate location or back to a lateral branch too small to keep the cut stem vital (typically less than 1/3 the diameter of the cut stem).

Tree – A woody perennial plant that has attained or will attain a height of twelve feet or a trunk diameter of at least 2 inches at 4.5 feet above natural grade.

Tree Board – The City Council or designee

Urban Forest Management Plan – A management plan for trees on city property and in public rights of way administered by the City. The plan has two components, a long-term plan and an annual work plan.

3.60.030 Applicability and Jurisdiction

This chapter applies to trees that are wholly or in part on city property. Any portion of a tree that extends over city property is considered to be on city property.

3.60.040 Tree Permit

No person other than the City may plant, remove, or conduct major pruning of a tree on city property without a City Tree Permit.

- (1) The permit application, accompanied by the fee established by Council resolution, must be submitted to the City Permit Center at least three working days before the intended activity. Only adjacent property owners may apply for a permit to plant, remove or conduct major pruning on City property.
- (2) The permit will be issued only if it meets the standards of this Chapter, the Development Code and City Standards and Specifications. The City may impose a condition of approval requiring removal or major pruning be performed by or under the supervision of a licensed and bonded professional arborist.
- (3) Work done under a tree permit shall be performed consistent with this Chapter and with applicable provisions of the Development Code and the City's Standards and Specifications.
- (4) Permits shall be valid for a maximum of 90 days.
- (5) A permit for tree removal may include a requirement for mitigation, including tree replacement, long term maintenance contract and/or tree value reimbursement. Permits for tree removal in the Central Business District may only be granted if tree replacement and tree value reimbursement is provided under Section 3.60.070.
- (6) Public utility companies holding a current franchise agreement with the City are exempt from this permit requirement. All activities shall be conducted in accordance with the provisions of this Chapter.
- (7) Tree planting, removal and major pruning by the City must be coordinated with the Public Works Department.
- (8) The City may remove any tree on City property determined to be hazardous.

3.60.050 Responsibility of Adjacent Property Owners

- (1) The owners of adjacent property are responsible for maintaining the health of trees in rights of way between their property and the nearest travel lane.

Responsibility includes watering, pruning, and protection against damage in conformance with this Chapter and City's Standards and Specifications.

- (2) The City may accept ongoing or project specific responsibility for maintaining, removing or planting tree(s) located on the public rights-of-way by agreement with the owner of the adjacent property.

3.60.060 Work Standards and Specifications

- (1) Work done on and near trees located on City property shall be performed in accordance with this Chapter and the City's Standards and Specifications.
- (2) The City recognizes the American National Standards Institute A300 Standards for Tree Care Operations as the appropriate standard for tree care. ANSI A300 standards for pruning shall apply to any person or entity engaged in the performance, business or trade of repairing, maintaining or preserving trees on City property.
- (3) Except for immature trees of insufficient height to maintain a crown above the required height, trees shall be pruned to maintain at a minimum a clearance height of 8' over public sidewalks and local streets and 14' over arterial and collector streets.
- (4) Any excavation, demolition or construction within 15 feet of a tree on City property shall include protective measure to avoid harm to the tree, as determined by the City and consistent with the City's Standards and Specifications.

3.60.070 Downtown Street Tree Replacement

This section applies to removal and replacement of trees in City rights of way in the Central Business District.

- (1) Trees may be removed only if replacement is provided. Replacement trees shall be consistent with the Downtown Street Tree Plan.
 - (A) On Wall and Bond Streets, street trees shall be Bowhall Maples.
 - (B) On Franklin, Minnesota and Oregon Avenues and on Brooks Street, street trees shall be flowering trees allowed under the Downtown Street Tree Plan.
- (2) Replacement trees shall be the largest available size, with a minimum DBH of 4 inches.

- (3) Trees shall be planted within an approved tree grate located no closer than 3 feet from the curb. Trees shall be installed using a root barrier to protect the City's sidewalk, curb and street.
- (4) The trees shall be installed with an approved irrigation system in conformance with the City's Standards and Specification.
- (5) Tree value reimbursement must be paid for removal of street trees in the Central Business District according to the following schedule.
 - (A) Less than 6-inch DBH - \$1000.00
 - (B) Between 6-inch and 10-inch - \$1500.00
 - (C) Greater than 10-inch - \$2000.00
- (6) The permittee shall provide a performance and maintenance bond to ensure the planting of the new tree(s) and their care during the first two years after planting. The amount of the bond shall be 120% of the actual replacement tree cost.

3.60.080 Prohibited Activities

- (1) No person shall top a tree located on city property.
- (2) No person shall attach or keep attached to any tree located on City property any ropes, wires, chains or other device. Seasonal holiday lights are permissible for up to 90 days.
- (3) No person shall damage any tree located on city property; allow any harmful substance to come into contact with a tree on city property, or permit any fire to burn in a way that will damage a tree on city property.
- (4) Actions otherwise prohibited by subsections (1) or (2) may be permitted under a tree permit if the City determines the action is needed to prevent interference with utility service, or that the action is in the public interest and is not inconsistent with the purposes of this Chapter.

3.60.090 Penalties and Process

- (1) A violation of this Chapter is a Class A Civil Infraction.
- (2) Any decision under this Chapter may be appealed to the Tree Board by filing a written appeal with the City Recorder within 10 working days of the decision. The appeal shall clearly state the reasons for the appeal. The Tree Board will hold a hearing and issue a final written decision.

CHAPTER 3.70 CITY CEMETERY

3.70.010 Pilot Butte Cemetery

The City owns and operates the Pilot Butte Cemetery.

3.70.015 Use of Cemetery

The Pilot Butte Cemetery shall be used for the burial of human bodies or ashes only. The burial of non-human remains is prohibited and non-human remains may be removed by the City.

3.70.020 Rules and Regulations

The City Manager may adopt and enforce regulations governing the care, protection, and use of the cemetery.

3.70.025 Fees

Fees for lots, monument and marker permits and permanent and annual maintenance and other goods and services provided by the cemetery shall be set by Council resolution.

3.70.030 Records

- (1) For each lot, the City shall keep a record showing:
 - (A) The name of the deceased.
 - (B) Date of burial or disinterment.
 - (C) Number of lot in which burial or from which disinterment is made.
 - (D) Number of interment permit.
- (2) The City shall keep an up-to-date map of the cemetery showing all lots and graves.

3.70.035 Conveyance of Cemetery Lots

Every conveyance of a lot or grave space in the cemetery shall be by certificate executed by the City. The conveyance shall only have the effect of giving the perpetual use of a lot for burial purposes subject to the State law and City code and regulations. The certificate will not be issued until the price of the space or lot and permanent maintenance is paid in full. The City shall keep a record of all certificates issued, giving name of purchaser, date of sale, number of space and price of each space or spaces.

3.70.040 Sale of Cemetery Spaces

The City may sell spaces in the cemetery in either full spaces 5 ft x 10 ft, half spaces 5 ft x 5 ft or by quarter spaces 5 ft x 2.5 ft. No burial permit shall be issued nor interment allowed if the City has not received payment in full for all cemetery charges.

3.70.045 Use of Burial Spaces

- (1) Human remains may be buried in a full space. No more than two burials of ashes may be made per quarter space. Infants may be buried in any space sufficient to facilitate the burial as determined by the City but not less than a half space shall be used. Burials between spaces where certificates are owned by the same person or family may be made if allowed by the City.
- (2) The City shall prepare all burial and disinterments. Only the City may open or close graves in the cemetery. The City shall supervise the setting of all markers, stones, or monuments in the cemetery.

3.70.050 Burial and Disinterment Permits

- (1) A permit is required for any burial or disinterment. The application for a burial permit must include the following, if known:
 - (A) The full name of the deceased
 - (B) Place of birth
 - (C) Age
 - (D) Date and place of death
 - (E) Date of interment and location of grave
 - (F) Name of mortuary
 - (G) Outside size of coffin or box
 - (H) Cause of death
- (2) An application for disinterment must provide evidence that the human remains will be properly disposed of and that the applicant has authority to take the action. Representatives of a funeral home must be present at the disinterment.
- (3) The owner of a permanent maintenance certificate may allow the interment of the remains of any person in the lot, but may not do so for compensation.

- (4) A permit is required to move a body from one location in the cemetery to another. When bodies are brought from other cemeteries, the burial standards and procedures apply.

3.70.060 Permanent Maintenance Fund

The City's permanent maintenance cemetery fund shall be used solely for cemetery upkeep. All proceeds from cemetery operations not used for operation and maintenance costs shall be paid into the Permanent Maintenance Cemetery Fund.

3.70.065 Monument and Marker Permits

- (1) A City permit is required to place monuments or markers in the cemetery. The permit application shall state the dimensions of the monument or marker and the lot where the monument or marker is to be placed.
- (2) Monuments and markers shall comply with the Cemetery regulations.
- (3) The City reserves the right to remove any markers, stones, or monuments placed in violation of this section.

TITLE 14 – WATER

CHAPTER 14.10 WATER

14.10.010 Restrictions on Use

- (1) City water customers may use City water only for purposes stated in the customer's application for City water service. All City supplied water must be used on the premises where service is provided unless written City permission is obtained.
- (2) No person other than the City may sell water by piped delivery to a property without a City franchise. No person may resell water delivered to it by the City without written City permission.

14.10.020 Use of City Water Facilities

- (1) No person other than a City employee in the course and scope of employment may open or in any way tamper with any portion of the City water distribution system, including valves, water meters and fire hydrants, without a City permit.
- (2) No person shall interfere with access to any City water facilities, including valves, water meters and hydrants. Interference with access to facilities includes placing any materials on or near a facility that makes access more difficult or delays access.

14.10.030 Connections to City Water System

- (1) No person may connect to the City water system without permission from the City or turn on a connection that has been shut off by the City.
- (2) All developed properties must connect to the City water system or a franchised water system if water service is available from the City or franchised system. Water service is considered available if a water main from which service may be taken is within 300 feet of the property. Any developed property within 500 feet of a fire hydrant must either connect to the City water system or a franchised water system or pay a fire flow access fee in an amount set by Council resolution. If a separate fire flow access fee is not established, the fire flow access fee shall be the lowest minimum base charge for service.
- (3) The City Manager may adopt regulations governing connections to the City water system.

14.10.040 Extraterritorial Connections

- (1) Except to comply with contractual obligations incurred prior to January 1, 2011, the City will not provide water service outside the City's Urban Growth Boundary.
- (2) The City may provide water service outside the City limits only if the property owner enters into an annexation agreement with the City.

14.10.050 Standards and Specifications

Developers that provide water system infrastructure must construct the infrastructure in compliance with the City's Standards and Specifications and consistent with the City's Water System Master Plan.

14.10.060 Ownership

- (1) The City owns its public water supply system, including water rights, wells, pumps, water delivery system, water treatment facilities, raw and treated water storage facilities, and the distribution system (mains) to and including water meters. All lines and other facilities beyond the water meter are private property and the responsibility of the property owner whose property is served. The property owner is responsible for the customer service line (the line leading out from the water meter), even those portions of the customer service line in the right of way.
- (2) For fire suppression lines that do not have premise isolation at the property line, the property owner is responsible for lines that provide fire suppression service to the point that the fire suppression line connects with a City main.

14.10.070 Fees and Charges

- (1) Persons receiving water service shall pay the City the fees established by council resolution for the service. All properties connected to the City's system shall pay at least a minimum charge. For purposed of this section, a property is considered connected to the City's system even if service has been turned off.
- (2) The City shall bill for water service on a monthly basis, and may establish different billing dates for different customers. Payment is due 13 days after the billing date. If a customer has not paid for the last two billing cycles, the City will send a shut- off notice any time after the due date for the second unpaid bill. The shut-off notice will specify the date by which payment in full must be made, which must be at least 10 calendar days after the shut-off notice. The City may add a fee to be set by Council resolution to cover the cost of the shut-off notice.
- (3) The City may combine billing for sewer, stormwater and other utilities and services with its water utility billing. If less than full payment is received,

payment will be applied first to any service other than water, stormwater or sewer utilities, second to stormwater service, third to sewer service, and last to water service.

14.10.080 Meters

All water service other than service solely to a fire suppression system shall be metered. All service solely to a fire suppression system shall have at a minimum have a detect meter.

CHAPTER 14.20 USE OF WATER

14.20.010 Applicability

- (1) This Chapter applies to all City of Bend water customers.
- (2) This Chapter also applies whenever:
 - (A) Water flows onto or accumulates in publicly owned right of ways,
 - (B) Water flows onto adjoining properties from irrigation systems, drains, or other non-natural water sources on a property, or
 - (C) Has an impact that violates or may lead to a violation of stormwater regulations or permits.

14.20.020 Water Waste Prohibited

Water shall be used only for beneficial uses. Water waste is prohibited.

14.20.030 Water Waste Defined

- (1) Water waste includes:
 - (A) Applying more water than is reasonably necessary to establish and maintain a healthy landscape.
 - (B) Applying water intended for irrigation to an impervious surface, such as a street, parking lot, alley, sidewalk or driveway. Water that travels beyond the property line is considered water waste. Allowing water to flow onto adjoining properties due to poorly designed, maintained or adjusted irrigation systems that allow water to be applied beyond intended irrigated areas or spray or run off onto adjoining walls or fences.
 - (C) Allowing water to pool or flow across the ground or into any drainage way, such as gutters, streets, alleys or storm drains.

- (D) Failing to repair, for a period of more than ten business days after notice, leaking, misadjusted or damaged irrigation components, service lines or other plumbing fixtures.
- (E) Washing vehicles, sidewalks, driveways, or other hardscape areas with a hose end that lacks a shut-off valve.

14.20.040 Emergency Water Use Curtailment

- (1) The City Manager is authorized to determine the need for water curtailment and to declare a water curtailment stage. Curtailment Plan provisions as contained in the State-approved Water Management and Conservation Plan (WMCP), will remain in effect until the City Manager terminates the curtailment requirement. Actions may be applied to the entire system, or only to those water use sectors, or those geographic areas that are directly affected by any water supply shortage.
 - (A) Stage 1: Water Shortage Alert. Forecast of below normal summer stream flows, forecasts of above normal temperatures, minor damage to transmission mains or distribution system, Minor mechanical or electrical malfunction at one to three wells.
 - (B) Stage 2: Mild Water Shortage. Demand Reduction Target 10 percent of Maximum Daily Demand; Supply capacity is 91 to 100 percent of demand, mechanical or electrical malfunction at four to seven wells, extended periods of above normal temperatures or below normal stream flows, declaration of drought by Governor pursuant to ORS 536.720, Extensive damage to water supply infrastructure.
 - (C) Stage 3: Serious Water Shortage. Demand Reduction Target 20 percent of Maximum Daily Demand; Supply capacity is 81 to 90 percent of demand, mechanical or electrical malfunctions at 8 to 12 wells, imminent terrorist threat against supply system, Multiple failures to transmission mains or distributions system.
 - (D) Stage 4: Severe Water Shortage. Demand Reduction Target 40 percent of Maximum Daily Demand; Supply capacity is less than 81 percent of demand, Loss of utility electrical service to wells, Fire in Bridge Creek watershed or near wells, contamination of source of supply, extensive damage to transmission, pumping, or treatment processes caused by natural disaster or any other event, intentional acts or fire, contamination of source, or any other event resulting in an immediate sustained deprivation of water supply.

14.020.050 Irrigation Hours

- (1) Irrigation hours apply all year.
- (2) Irrigation is not allowed between the hours of 9:00 a.m. and 5:00 p.m.
- (3) Even address numbers may water only on even numbered days of the month.
- (4) Odd address numbers may water only on odd numbered days of the month.
- (5) Watering is allowed for all addresses on the 31st day of the month.
- (6) These regulations apply to hoses or hose-end devices left unattended.
- (7) These regulations do not apply to watering by hand-held hose while continuously being attended.
- (8) For the purpose of determining if an address is watering on an even or odd day, it is the day in which the first irrigation cycle begins.

14.20.060 Exceptions and Variances

- (1) The following activities are exempt from the day and time restrictions of this Chapter:
 - (A) Watering for up to 21 days to establish new turf from seed or sod.
 - (B) Watering for new plant material such as flowers, trees, shrubs on the day of planting.
 - (C) Watering essential to preserve turf subject to heavy public uses.
 - (D) Watering or operating an irrigation system for installation, repair, adjustments, locating sprinkler heads or lines or other reasonable maintenance related uses, so long as the system is attended throughout the period of operation.
- (2) Water Utility Staff may allow temporary variances for reasonable cause to allow for special circumstances not described in this code, including the use of new irrigation technology.

14.20.070 Penalty

Any violation of this Chapter is a Class "B" Civil Infraction.

CHAPTER 14.30 CROSS CONNECTION CONTROL FOR WATER SYSTEMS

14.30.010 Purpose

The purpose of this Chapter is to protect the water supply and distribution system of the City from contamination or pollution from cross connections.

14.30.020 Definitions

The following definitions apply in this Chapter. Terms used in this Chapter and not defined in this section shall have the meaning defined in Oregon Administrative Rules, Chapter 333, or the Manual of Cross Connection Control published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California.

- (1) "Backflow" means the flow in the direction opposite to the normal flow or the introduction of any foreign liquids, gases, or substances into the water system of the City.
- (2) "Certified Backflow Assembly Tester" means a person who has successfully completed and maintains all requirements as established by the Department of Human Services - Health Services to be a Tester in the state of Oregon.
- (3) "Contamination" means the entry into or presence in a public water supply system of any substance which may be deleterious to health and/or quality of the water.
- (4) "Cross Connection" means any physical arrangement where a potable water supply is connected, directly or indirectly, with any other non-drinkable water system or auxiliary system, sewer, drain conduit, swimming pool, storage reservoir, plumbing fixture, swamp coolers or any other device which contains, or may contain, contaminated water, sewage or other liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water system as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices or other temporary or permanent devices through which or because of which backflow may occur, are considered to be cross connections.
- (5) "Degree of Hazard" means the non-health hazard or health hazard or high hazard classification that shall be assigned to all actual or potential cross connections.
- (6) "Double Check Detector Assembly" or "DCDA" means an assembly which consists of two independently operating check valves which are spring-loaded or weighted. The assembly comes complete with a shut-off valve on each side of the checks, as well as test cocks to test the checks for tightness. It shall also be

provided with a factory bypass arrangement with a meter and a minimum of an approved double check assembly.

- (7) "Health Hazard" means an actual or potential threat of contamination of a physical, chemical or biological nature to the public potable water system or the consumer's potable water system that would be a danger to health.
- (8) "Mobile Units" means units that are temporary in nature, connecting to the water system through a legally-permitted hydrant, hose bib, or other appurtenance of a permanent nature that is part of the City's water system or a permanent water service to a premise. Examples can include but are not limited to the following: water trucks, pesticide applicator vehicles, chemical mixing units or tanks, waste hauler's trucks or units, sewer cleaning equipment, carpet or steam cleaning equipment other than homeowner use, rock quarry or asphalt/concrete batch plants or any other mobile equipment or vessel that poses a threat of backflow in the City Water System. Uses that are excluded from this definition are recreational vehicles at assigned sites or parked in accordance with other City policies pertaining to recreational vehicles and homeowner devices that are used by the property owner in accordance with other provisions of this, or other, City policies pertaining to provision of water service to a premise.
- (9) "Non-health Hazard" means the classification assigned to an actual or potential cross connection that could allow a substance that may be objectionable, but not hazardous to one's health, to backflow into the potable water supply.
- (10) "Pollution Hazard" means an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system, but which would not constitute a health or system hazard, as defined. The maximum intensity of pollution to which the potable water system could be degraded under this definition would cause minor damage to the system or its appurtenances.
- (11) "Reduced Pressure Principle Backflow Prevention Assembly" or "Reduced Pressure Principle Assembly" means an assembly containing two independently-acting approved check valves together with a hydraulically-operated, mechanically-independent pressure differential relief valve located between the check valves, and at the same time, below the first check valve. The assembly shall include properly located test cocks and two tightly closing shut-off valves.

14.30.030 Application

The Chapter applies to all premises served by the City Water System, regardless of date of connection.

14.30.040 Cross Connection Regulations

- (1) All cross connections must be installed used and maintained in compliance with this Chapter.
- (2) The City may survey and inspect to determine if any actual or potential cross connection exists and order the installation of an assembly meeting City standards and specifications be installed at the service connection.
- (3) The owner, occupant or person in control of any given premises is responsible for all cross connection control within the premises, including purchase, installation, testing, repair and maintenance of backflow prevention assemblies.
- (4) Reduced Pressure Backflow Assembly must be installed and maintained when required by state regulations as determined by the City.

14.30.050 Backflow Prevention Assembly Requirements

The City shall determine the type of backflow assemblies to be installed. All assemblies shall be installed at the service connection unless the City approves installation at the point of use. An approved assembly shall be required in the following circumstances:

- (1) Where any material dangerous to health could enter the City's water system, the water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention assembly.
- (2) When the nature and extent of any activity at a premise, or the materials used in connection with any activity at premises, or materials stored at a premise, could contaminate or pollute the potable water supply.
- (3) When a premise has one or more cross connections.
- (4) When internal cross connections are present that are not correctable.
- (5) When intricate plumbing arrangements are present making it impractical to ascertain whether cross connections exist.
- (6) When the premise has a repeated history of cross connections being established or re-established.
- (7) When entry to the premises is restricted so that surveys for cross connections cannot be made with sufficient frequency to assure cross connections do not exist.
- (8) When materials are being used that would result in a health hazard if backflow occurred.

- (9) When an appropriate cross connection survey report form has not been filed with the City.
- (10) Any and all used-water return systems.
- (11) If a point-of-use assembly has not been tested or repaired as required by this Ordinance, the installation of a reduced pressure principle assembly will be required at the service connection.
- (12) There is piping or equipment for conveying liquids other than potable water and the piping or other equipment is under pressure and installed and operated in a manner that could cause a cross connection.
- (13) When any type of chemical spray attachment is connected to the plumbing, including garden hose fertilizers and pesticide applicators, without proper protection from the potential of backflow occurring.
- (14) The use of any type of radiator flush kits attached to the plumbing without proper protection from backflow occurring.
- (15) Wherever reclaimed water or ditch water is used on premises.
- (16) When there is a premise with an auxiliary water supply which is interconnected to the City Service System.
- (17) Any other situation in which the City determines that a backflow prevention assembly is appropriate.

14.30.060 New Construction

- (1) On all new non-residential construction, an approved backflow assembly shall be installed at the service connection. The type of the assembly will be commensurate with the degree of hazard as determined by the City.
- (2) When a building is constructed on commercial premises, and the end use of the building is not determined or could change, a reduced pressure principle backflow prevention assembly shall be installed at the service connection to provide protection of the public water supply in the event of the most hazardous use of the building.

14.30.070 Retrofitting

Retrofitting shall be required at all service connections where an actual or potential cross connection exists, and wherever the City deems retrofitting necessary to comply with the state regulations or this Chapter.

14.30.080 Irrigation Systems

All irrigation systems shall be protected according to Uniform Plumbing Code regulations. In the event any system is equipped with an injector system, a reduced pressure principle assembly will be required.

14.30.090 Thermal Expansion

If a closed system has been created by the installation of a backflow prevention assembly, or other appurtenances, it is the responsibility of the property owner, the occupant, or person in control of the property to eliminate the possibility of damage from thermal expansion in accordance with the Uniform Plumbing Code.

14.30.100 Mobile Units

Any mobile unit that uses the water from any premises served by the City Water system, must obtain a permit from the City and be inspected to assure an approved air gap or reduced pressure principle assembly is installed on the unit.

14.30.110 Installation

- (1) All backflow prevention assembly installations shall comply with City Standards and Specification and applicable State regulations.
- (2) If the premise isolation assembly is allowed to be installed at a location other than the point of connection to the City water system, the City must have access to the assembly. No connections can be made between the meter and the backflow assembly.
- (3) The type of backflow prevention assembly required shall be commensurate with the degree of hazard that exists and meet standards set by State regulations.

14.30.120 Pressure Loss

Any decrease in water pressure caused by the installation of a backflow assembly is not the responsibility of the City

14.30.130 Fire Systems

- (1) An approved double check detector assembly shall be the minimum protection on all new fire sprinkler systems using piping material that is not approved for potable water use, and/or that does not provide for periodic flow-through. A reduced pressure principle detector assembly must be installed, if any solution other than potable water can be introduced into the sprinkler system. Retrofitting on fire sprinkler systems will be required in each of the following circumstances:

- (A) When improper maintenance has occurred;
 - (B) On all high hazard systems;
 - (C) When the City deems necessary; or
 - (D) When required by state regulations.
- (2) In the event an assembly is installed on a designated lateral, a detector assembly commensurate with the degree of hazard will be required consistent with State regulations and in a location approved by the City.

14.30.140 Temporary Meters and Hydrant Valves

Backflow protection is required on all temporary meters and hydrant valves before use. The type of assembly will be commensurate with the degree of hazard and will be determined on a case-by-case basis by the City.

14.30.150 Access to Property

City personnel may enter property to which the City provides water service during reasonable hours for the purpose of determining compliance with this Chapter or if backflow prevention devices are needed. If any owner, occupant or person in control refuses City personnel access, a reduced pressure principle assembly must be installed at the service connection.

14.30.160 Annual Testing and Repairs

All backflow prevention assemblies shall be tested immediately upon installation, and at least annually thereafter by a certified backflow assembly tester at the expense of the property owner, tenant or other person in charge of the property. All assemblies found not functioning properly shall be promptly repaired or replaced at the expense of the owner, occupant or person in control of the premises. An assembly must be retested immediately if moved, repaired or replaced.

All repairs on backflow assemblies must be performed according to state regulations and the City's standards and specifications.

14.30.170 Maintenance of Assemblies

Backflow prevention assemblies shall be maintained, tested and repaired in accordance with this Chapter and applicable regulations. The assembly owner is responsible for protecting the assembly from freezing, vandalism or other damage. If an assembly is not properly tested and repaired, the City will have the assembly tested and repaired and apply all costs associated with this to the water bill issued for the premises.

14.30.180 Backflow Assembly Testers

Only state-certified backflow assembly testers may test backflow assembly devices. Backflow assembly testers shall submit records of all backflow assembly test repairs to the City within ten business days of completing the test.

14.30.190 Costs of Compliance

- (1) All costs associated with purchase, installation, surveys, testing, replacement, maintenance, parts and repairs of the backflow prevention assembly, and all costs associated with enforcement of this Chapter, are the financial responsibility of the property owner, occupant, or other person in control of the premises.
- (2) Any person violating any of the provisions of this Chapter and who causes damage to or impairs the City System, including, but not limited to, allowing contamination, pollution, any other solution or used water to enter the City Water System, shall be liable to the City for any expense, loss or damage caused by the violation. The City shall collect from the violator the cost incurred by the City for any cleaning, purifying, repair or replacement work or any other expenses caused by the violation. Refusal to pay the assessed costs shall constitute a violation and shall result in termination of service.
- (3) All cost associated with any disconnect or reconnect fees resulting from the enforcement of this Ordinance are the sole responsibility of the water utility account holder and/or owner of the premises.

14.30.200 Termination of Service

Failure of any owner, occupant or person in control of the premises to install a required assembly, have it tested annually and/or to discontinue the use of all cross connections and to physically separate cross connections in accordance with this Chapter is sufficient cause for the discontinuance of public water service to the premises pursuant to applicable State regulations. In an emergency or where an immediate threat to life or public health is found to exist, discontinuance or termination of public water the City may immediately terminate service to the premises.

The City may, at the property owner's expense, install a reduced pressure assembly at the meter. Testing, maintenance and repair of the assembly will be the responsibility of the property owner or service recipient.

CHAPTER 14.40 PROHIBITION OF THE ADDITION OF FLUORIDE COMPOUNDS TO THE CITY WATER SUPPLY

14.40.005 Fluoridation Prohibited

No person may cause fluoridation of the Bend water supply or system or install machinery intended to be used for fluoridation as part of Bend's water system.

TITLE 15 SEWER

Chapter 15.10 GENERAL SEWER REGULATIONS

15.10.005 Definitions

The following definitions apply in this Chapter:

- (1) "Biochemical Oxygen Demand" (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20° centigrade expressed in terms of weight and concentration (milligrams per liter (MG/l)).
- (2) "Building Drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.
- (3) "Building Sewer" means the sewer line extending from the building drain to the public sewer or other place of disposal. Building sewers include not only sewer lines on private property, but lines within rights-of-way up to the point where the line connects with a sewer main. Building sewers are not part of the public sewer and are not owned by the City, even if located in rights-of-way.
- (4) "Garbage" means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.
- (5) "Natural Outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.
- (6) "Public Sewer" means any sewer main owned and controlled by the City. A building sewer is not a sewer main and is not a public sewer.
- (7) "Sanitary Sewer" means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.
- (8) "Sewage" means the water-carried wastes from residences, business buildings, and institutions.
- (9) "Sewage Treatment Plant" means any arrangement of devices and structures used for treating sewage.
- (10) "Sewage Works" means all facilities for collecting, pumping, treating and disposing of sewage.

- (11) "Sewer" means a pipe or conduit for carrying sewage.
- (12) "Slug" Any discharge at a flow rate or concentration which could cause a violation of the discharge standards of this Code or any discharge of a non-routine, episodic nature including an accidental spill or a non-customary batch discharge.
- (13) "Storm Sewer" means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
- (14) "Suspended Solids" means a total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
- (15) "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

15.10.010 Use of Public Sewers Required

- (1) Except for properties to which City sewer service is not available, no person shall construct any new private sewage disposal system. Existing private sewage disposal systems may be used and maintained if connection to City service is not available or if continued connection is authorized under Subsection (2). Any system not operated by the City is a private sewage disposal system.
- (2) Unless otherwise permitted by this section, all property used for human occupancy or employment within 300 feet of a public sanitary sewer with available capacity shall be hooked up to the sewer. The property shall be hooked up to the public sanitary sewer within 90 days after the date official notice is given to hook up, unless the City agrees in writing to extend the deadline. The City will agree to extend the deadline for connection if the property owner had constructed a private sewer system because of a lack of capacity in the City sewer system. The extension may not extend beyond 20 years from the date of construction of the private sewer system, and connection shall be required at any time that repairs are required to the private sewage disposal system. The hookup shall be accomplished in compliance with all applicable Federal, State and City laws, regulations and policies.
- (3) City water service may be terminated to any property that has not hooked up to the sewage system in compliance with the provisions of this ordinance or any other applicable law, rule or regulation.
- (4) All persons receiving sewer service from the City shall pay the fee for the service established by Council resolution. The Council may set rates based on type of

use, on volume discharged, on strength of the discharge, and/or on any other basis the Council determines to be appropriate.

15.10.015 Private Sewage Disposal

- (1) Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system complying with this Chapter and State regulations.
- (2) All applicable state and county permits and approvals must be obtained before commencement of construction of a private sewage disposal system.
- (3) A private sewage disposal system shall not be used until the installation is approved by responsible state and county departments.
- (4) The type, capacities, location and layout of a private sewage disposal system shall comply with all state regulations. No private sewage disposal system may discharge into any natural outlet.
- (5) When a property with a private sewage disposal system is connected to the public City sewer, the private sewage disposal facilities shall be abandoned in accordance with State regulations.
- (6) The owner shall operate and maintain private sewage facilities in a sanitary manner at all times.

15.10.020 Building Sewer Connections and Responsibilities

- (1) No unauthorized person shall uncover, connect with, use, alter or disturb any public sewer without a written permit from the City.
- (2) Applications for a sewer connection shall be on City forms. The permit application must be accompanied by plans and specifications and any other information requested by the City.
- (3) The owner is responsible for all costs and expenses relating to the installation and connection of the building sewer. The owner shall indemnify the City from any loss or damage that may directly or indirectly result from the installation of the building sewer.
- (4) A separate and independent building sewer shall be provided for each lot or parcel.
- (5) Old building sewers may be used in connection with new buildings only if the City determines that they meet all requirements of this chapter.

- (6) The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Codes and City standards and specifications.
- (7) The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to a public sewer. The connection shall be made under the supervision of the City.
- (8) All excavations for building sewer installation shall comply with the City Standards and Specifications related to work zone protection.
- (9) Streets, sidewalks, and other public property disturbed in the course of the work shall be restored in accordance with the City Standards and Specifications unless the City approves otherwise in writing.
- (10) The owner of property served by a building sewer shall be responsible for maintenance and repair of the building sewer to the point where the building sewer is connected to a City sewer main. This responsibility includes responsibility for any costs of maintenance or repair. In the event of any break, leak or other damage to a building sewer, the owner of the property served by the building sewer shall cause repairs to be made immediately to minimize any sewer spillage.

15.10.025 Use of Public Sewers

- (1) No person shall discharge, or cause to be discharged, any storm water, surface water, ground water, roof runoff, subsurface drainage, unreasonably large amounts of uncontaminated cooling water or unpolluted process waters to any sanitary sewer.
- (2) Storm water and all other unpolluted drainage shall be discharged to storm sewers, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet if the discharge is approved in writing by the City and Oregon DEQ.
- (3) No person shall discharge, or cause to be discharged, any of the following described waters or wastes to any public sewers:
 - (A) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
 - (B) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the effluent disposal system of the sewage treatment plant,

including but not limited to cyanides in excess of 0.5 mg/l as CN in the wastes as discharged to the public sewer.

- (C) Any water or wastes having a pH lower than 5.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
 - (D) Solid or viscous substances in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewage works including, but not limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.
- (4) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the City that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the effluent disposal system, or can otherwise endanger life, limb, public property or constitute a nuisance. In review of the acceptability of these wastes, the City will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The substances prohibited are:
- (A) Any liquid or vapor having a temperature higher than 149° F. (65° C.).
 - (B) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: Grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble, dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding, or polishing wastes.
 - (C) Any waters or wastes containing iron, chromium, copper, zinc, lead and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds established City limits.

- (D) Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the City as necessary, after treatment of the composite sewage, to meet the requirements of the State or Federal Government.
- (E) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the State or Federal regulations.
- (F) Any waters or wastes having a pH in excess of 11.0.
- (G) Materials which exert or cause:
 - (1) Unusual concentrations or inert suspended solids, (including but not limited to: Fullers earth, lime slurries, and lime residues) or of dissolved solids (including, but not limited to, sodium chloride and sodium sulfate).
 - (2) Excessive discoloration (including, but not limited to, dye wastes and vegetable tanning solutions).
 - (3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
 - (4) Unusual volume of flow or concentration of wastes constituting slugs.
- (H) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of the State and Federal agencies having jurisdiction over discharge to the receiving water.

15.10.030 Protection from Damage

No unauthorized person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the City's sewage treatment system.

15.10.035 Inspection

- (1) The City shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter.

- (2) The City shall be permitted to enter all private properties through which the City holds an easement for the purposes of, but not limited to, inspections, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the easement.

15.10.040 Penalties

Penalties. Failure to comply with this Chapter or any regulation or order issued under this Chapter is a Class A civil infraction. Each day on which a violation occurs or continues is a separate violation.

Chapter 15.20 WASTEWATER PRETREATMENT

15.20.005 Purpose and Policy

- (1) Chapters 15.20 through 15.80 regulate discharges into the City's sewage system to protect the functioning of the system, including the treatment plan, and to comply with applicable regulations. The objectives of these chapters are:
 - (A) To prevent the introduction of pollutants into the system that will interfere with the operation of the treatment plant;
 - (B) To prevent the introduction of pollutants that cannot be adequately treated before discharge from the treatment plant or that are otherwise be incompatible with the treatment plant;
 - (C) To ensure that the quality of the treatment plant sludge is maintained at a level that allows its use and disposal in compliance with applicable statutes and regulations;
 - (D) To protect City personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and
 - (E) To improve the opportunity to recycle and reclaim wastewater and biosolids from the treatment plant.
- (2) This ordinance shall apply to all who discharge into the City sewage system. This Chapter authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees to recover the City's costs.

15.20.010 Administration

Except as otherwise provided, the Public Works Director shall administer, implement and enforce this Title. The Public Works Director may delegate authority and responsibilities granted by this Title.

15.20.015 Definitions

The following definitions apply in Chapter 15.20 through 15.80:

- (1) Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Applicable Pretreatment Standards. For any specified pollutant, City prohibitive standards, City specific pretreatment standards (local limits), State of Oregon pretreatment standards, or EPA's Categorical Pretreatment Standards (when effective), whichever standard is appropriate or most stringent.
- (3) Authorized Representative of the User.
 - (A) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this Chapter is a corporation. For the purpose of this paragraph, a responsible corporate officer means:
 - (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (2) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (B) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

- (C) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.
- (D) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.
- (5) Best Management Practice(s) (BMPs) A schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to comply with this Chapter. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
- (6) Biochemical Oxygen Demand (BOD) The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° Celsius, usually expressed as a concentration [milligrams per liter (mg/l)].
- (7) Bio-solids Solid or semisolid material obtained from treated wastewater, often used as fertilizer.
- (8) Categorical Pretreatment Standard or Categorical Standard Any regulation containing pollutant discharge limits promulgated by the U.S. EPA that apply to a specific category of users. The standards are listed 40 CFR Chapter I, Subchapter N, Parts 405-471.
- (9) Categorical User A user regulated by one of EPA's Categorical Pretreatment Standards.
- (10) Chemical Oxygen Demand A test to measure the amount of oxygen consumed where the oxygen is derived from chemicals.
- (11) Composite Sample The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
- (12) Cooling Water/Non-Contact Cooling Water Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.

- (13) DEQ The Oregon Department of Environmental Quality.
- (14) Domestic User (Residential User) Any person discharging wastewater into the City sewage system similar in volume and/or chemical make-up to the discharge of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 80 gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day.
- (15) EPA The U.S. Environmental Protection Agency, including its authorized officials.
- (16) Existing Source A wastewater discharge source that was in operation or began construction before the EPA's publication of proposed categorical pretreatment standards applicable to the source if and when the standard is promulgated.
- (17) Existing User Any non-categorical user that was discharging wastewater prior to the effective date of the City's pretreatment regulations.
- (18) Grab Sample A sample taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
- (19) Discharge, Including Indirect Discharge Any liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, that are discharged into the City sewage system and ultimately to the treatment plant.
- (20) Interference
- (A) Inhibition or disruption of the city sewage system, including treatment processes or operations;
 - (B) inhibition or disruption of sludge processes, use or disposal; or
 - (C) causation of a violation of the City's WPCF permit or of the prevention of biosolids use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued under those provisions (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act. Interference is normally caused by a discharge.

- (21) Maximum Allowable Discharge Limit The maximum concentration or mass loading of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event
- (22) Medical Wastes Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (23) NAICS Codes North American Industry Classification System Codes.
- (24) New Source
- (A) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307 (c) of the Act which will be applicable to such source if the standards are then promulgated, provided that:
- (1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation but otherwise alters, replaces, or adds to existing process or production equipment.
- (C) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (A) Begun, or caused to begin as part of a continuous on-site construction program
- (1) any placement, assembly, or installation of facilities or equipment; or

- (2) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
- (25) New User A "new user" is a user that is not regulated under federal categorical pretreatment standards but that applies to the City for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the City's collection system after the effective date of this ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "existing user" if no significant changes are made in the manufacturing operation.
- (26) Pass Through A discharge that exits the treatment plant into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the City's WPCF permit. This includes an increase in the magnitude or duration of a violation.
- (27) Permittee A person or user issued a wastewater discharge permit by The City.
- (28) Person Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.
- (29) pH A measure of the acidity or alkalinity of a substance, expressed in standard units.
- (30) Pollutant Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].
- (31) Pretreatment The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater

prior to (or in lieu of) introducing such pollutants into the City Sewage system. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).

- (32) Pretreatment Requirement Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- (33) Pretreatment Standards or Standards Prohibited discharge standards, categorical pretreatment standards, and local limits established by the City.
- (34) Prohibited Discharge Standards or Prohibited Discharges Absolute prohibitions against the discharge of certain substances imposed by this Chapter.
- (35) Treatment Plant A "treatment works," as defined by the Act that is owned by the City.
- (36) Septic Tank Waste Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks, trucked waste and waste tanks.
- (37) Sewage Human excrement and gray water (household showers, dishwashing operations, etc.).
- (38) Sewer Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.
- (39) Sewage System The entire system used by the City to collect, transport, treat, and discharge treated effluent, including all sewers and treatment plants.
- (40) Significant Industrial User
 - (A) A user subject to categorical pretreatment standards; or A user that:
 - (1) Discharges an average of 25,000 GPD or more of process wastewater to the City sewage system. (excluding sanitary, non-contact cooling, and boiler blowdown wastewater); or
 - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
 - (3) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement.

- (B) A Significant Industrial User is an Industrial User subject to Categorical Pretreatment Standards under 40 CFR, 403.6 and 40 CFR Chapter I, subchapter N.
 - (C) Upon a finding that a user meeting the criteria in Subchapter (1) has no reasonable potential for adversely affecting the POTWs operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user and in accordance with procedures established according to 40 CFR 403.8(f)(6)] determine that such user should not be considered a significant industrial user.
- (41) Sludge Semisolid material such as the type precipitated by sewage treatment.
 - (42) Slug Control Plan-40 CFR 403.8 (B)(6)(iv) Requirements to control Slug Discharges, which include development of a compliance schedule for installation of technology required to meet Pretreatment Standards and submission of all notices and reports.
 - (43) Slug Load Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in Section 4.415 of this ordinance or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.
 - (44) Standard Industrial Classification (SIC) Code A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
 - (45) Storm Water Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
 - (46) Total Suspended Solids or TSS The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
 - (47) Treatment Plant Effluent Liquid discharge from the treatment plant. .
 - (48) User or Industrial User A source of a direct or indirect discharge to the sewage system other than a domestic user.
 - (49) Wastewater Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are discharged to the sewage system and treated by the treatment plant.

- (50) Wastewater Discharge Permit An authorization or equivalent control mechanism issued by the City to users discharging wastewater to the sewage system. The permit or control mechanism may contain appropriate pretreatment standards and requirements.
- (51) Wastewater Treatment Plant or Treatment Plant The facility that treats municipal sewage and industrial waste.

15.20.020 Abbreviations

The following lists the meanings of abbreviations used in Chapters 15.20 through 15.80:

BOD - Biochemical Oxygen Demand
CFR - Code of Federal Regulations
COD - Chemical Oxygen Demand
DEQ – Department of Environmental Quality
EPA - U.S. Environmental Protection Agency
GPD - gallons per day
l - liter
LEL - Lower Explosive Limit
mg - milligrams
mg/l - milligrams per liter
NPDES - National Pollutant Discharge Elimination System
O&M - Operation and Maintenance
POTW - Publicly Owned Treatment Works
RCRA - Resource Conservation and Recovery Act
SIC - Standard Industrial Classifications
SLUG CONTROL PLAN-Requirement to control slug discharges
SWDA - Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
TSS - Total Suspended Solids
USC - United States Code
WPCF- Water Pollution Control Facility

15.20.025 Prohibited Discharges

- (1) **General Prohibitions:**
No user shall introduce or cause to be introduced into the sewage system any pollutant or wastewater that causes pass through or interference. These general prohibitions apply to all users whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- (2) **Specific Prohibitions:** No user shall introduce or cause to be introduced into the sewage system the following pollutants, substances, or wastewater:
- (A) Pollutants that create a fire or explosive hazard, including, but not limited

to, wastestreams with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 CFR §261.21.

- (B) Wastewater having a pH less than 6.0 or more than 10.0, or otherwise causing corrosive structural damage to the sewage system or equipment.
- (C) Solid or viscous substances in amounts which will cause obstruction of the flow in or to the sewage system resulting in interference [but in no case solids greater than one half inch [½"] or one and one quarter centimeters [1.25 cm] in any dimension.
- (D) Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the sewage system.
- (E) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 77°F (25°C) unless the DEQ, upon the request of the City, approves alternate temperature limits not to exceed 125 degrees.
- (F) Petroleum oil, non-biodegradable cutting oil, products of mineral oil origin, or synthetic oils in amounts that will cause interference or pass through.
- (G) Pollutants which result in the presence of toxic gases, vapors, or fumes within the sewage system in a quantity that may cause acute worker health and safety problems.
- (H) Trucked or hauled pollutants, except at discharge points designated by the City.
- (I) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or health, or to prevent entry into the sewers for maintenance or repair.
- (J) Wastewater that imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions that impart color to the treatment plant's effluent. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life.
- (K) Wastewater containing any radioactive wastes or isotopes.

- (L) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized in writing by the City.
- (M) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes.
- (N) Medical wastes, except as specifically authorized by the City.
- (O) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
- (P) Detergents, surface-active agents, or other substances that may cause excessive foaming in the sewage system.
- (Q) Any liquid, solids, or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the sewage system or to the operation of the sewage system. At no time shall two successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than 5% nor any single reading over 10% of the lower explosive limit (LEL) of the meter.
- (R) Grease, animal renderings or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gasoline, tar asphalt residues, petroleum products, residues from refining or processing of fuel or lubricating oil, mud, glass grinding or polishing wastes.
- (S) Any substance which will cause the City to violate its WPCF and/or other disposal or discharge permits system permits.
- (T) Any wastewater, which in the opinion of the City can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the ground water or receiving waters; or can otherwise endanger life, limb, public property, or constitute a nuisance.
- (U) The contents of any tank or other vessel owned or used by in the business of collecting or pumping sewage, effluent, septic tank waste, or other wastewater unless the operator has obtained testing and approval by the City and paid all fees assessed for the privilege of the discharge.

- (V) Any hazardous wastes as defined in state regulations or in 40 CFR Part 261.
- (W) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).
- (X) Sewage sludge, except in accordance with the City's WPCF permit. Pollutants, substances, or wastewater prohibited by this Chapter shall not be processed or stored in such a manner that they could be discharged to the sewage system.

15.20.030 Federal Categorical Pretreatment Standards

The national categorical pretreatment standards promulgated by EPA and found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are incorporated into and are enforceable under this Title. When a categorical pretreatment standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the City convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the City.

- (1) The City may establish equivalent mass limits only if the Industrial User meets all the following criteria:
 - (A) The Industrial User employs or demonstrates that it will employ water conservation methods and technologies that substantially reduce water use during the term of its individual wastewater discharge permit.
 - (B) The Industrial User uses control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, without using dilution as a substitute for treatment.
 - (C) Sufficient information is provided to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions.
 - (D) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge.
 - (E) Consistent compliance with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

- (2) An Industrial User subject to equivalent mass limits must:
- (A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - (B) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
 - (C) Continue to record the facility's production rates and notify the City whenever production rates are expected to vary by more than 20 percent from its baseline production rates. Upon notification of a revised production rate, City will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - (D) Continue to employ the same or comparable water conservation methods and technologies as those implemented under this section so long as it discharges under an equivalent mass limit.
- (3) Where the Authority chooses to establish equivalent mass limits, it will:
- (A) Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
 - (B) When notified of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
 - (C) Retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to 403.6(d) and Section 2.7 of the Authority's Sewer Use Ordinance. The Industrial User must also be in compliance with 403.17 (regarding the prohibition of bypass).

15.20.035 State Requirements

State requirements and limitations on discharges to the sewage system shall be met by all users which are subject to the standards if they are more stringent than federal requirements and limitations or this Title.

15.20.040 Local Limits

In addition to categorical pretreatment standards, no significant industrial user (SIU) shall discharge wastewater containing pollutants into the system in excess of limitations specified in its wastewater discharge permit or any other limits established by the City. The City may establish and revise from time to time standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Ordinance. These standards, including Best Management Practices (BMPs) are only applicable to significant industrial users. Standards established in accordance with this Title will be deemed pretreatment standards for the purposes of Section 307(d) of the Clean Water Act. Wherever a discharger is subject to both categorical pretreatment standards and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply. The City may also develop Best Management Practices (BMPs) to implement permit specific and local limits for industrial users. BMPs shall be considered local limits and Pretreatment Standards. The City may impose mass limitations in addition to (or in place of) concentration-based limitations.

15.20.045 Right of Revision

The City reserves the right to establish, by ordinance, resolution or in wastewater discharge permits, more stringent standards or requirements on discharges to the sewage system.

15.20.050 Special Agreement

The City may enter into special agreements with users setting out special terms under which they may discharge to the sewage system. Users may request a net/gross adjustment to a categorical standard in accordance with 40 CFR § 403.30. They may also request a variance from the categorical pretreatment standard from DEQ in accordance with 40 CFR § 403.13. In no case will a special agreement waive compliance with a categorical pretreatment standard, federal pretreatment requirement, or this Title.

15.20.055 Dilution

No user may increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The City may impose mass limitations on users that may be using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

15.20.060 Pretreatment Facilities

Users shall provide wastewater treatment to comply with Chapters 15.20 through 15.80 and shall achieve compliance within the time limitations specified by the EPA, the State, or the City, whichever is most stringent. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review and construction shall not proceed until the plans are approved in writing by the City. The review of the plans and operating procedures does not relieve the user from the responsibility of modifying the facility as necessary to produce a discharge that complies with Chapters 15.20 through 15.80.

415.20.065 Compliance Deadline

Compliance by existing sources covered by Categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The City shall establish a final compliance deadline date for any existing user not covered by Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more restrictive than the federal Categorical Pretreatment Standards.

New source and new users are required to comply with applicable pretreatment standards within the shortest feasible time, not to exceed 90 days from the beginning of discharge. New Sources and new users shall install, have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing user or a categorical user that must comply with a more stringent local limit who is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to insure compliance within the shortest time feasible.

15.20.070 Additional Pretreatment Measures

- (1) The Director of Public Works may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the sewage system and determine the user's compliance with the requirements of this ordinance.
- (2) Each user discharging into the sewage system more than 25,000 gallons per day or more than 5% of the average daily flow into the sewage system, whichever is less, shall install and maintain, on its property and at its expense, a suitable

storage and flow-control facility to insure equalization of flow over a 24-hour period. The facility shall have a capacity for at least 50% of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, and shall be regulated as directed by the City. A wastewater discharge permit may be issued solely for flow equalization.

- (3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City and shall be located to be easily accessible for cleaning and inspection. Interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense. All records for inspections, cleaning and repair must be maintained and readily available for review by City staff. Records should include third party cleaning manifests.
- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

15.20.075 Slug Control Plan

- (1) General provisions. All users shall provide protection from accidental or intentional discharges of materials that may interfere with or cause pass through to the sewage system by developing and implementing a slug control plan. Facilities necessary to prevent the discharge of prohibited or restricted substances shall be provided and maintained at the user's cost and expense. A plan showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation of the plan. Review and approval of the plans and operating procedures by the City does relieve the user from the responsibility to modify its facility as necessary to meet the requirements of Chapters 15.20 through 15.80. The plan shall be posted and available for inspection at the facility during normal business hours. SIUs must notify the City immediately of any changes at their facilities, not already addressed in their slug control plan or other slug control requirements, that which may affect the potential for a Slug Discharge.
- (2) Specific provisions. The City may require any user to develop, submit for approval, and implement a slug control plan. The need and requirement for a plan shall be included in the user's Wastewater Discharge Permit.
- (3) A slug control plan shall address, at a minimum, the following:
 - (A) Description of discharge practices, including non-routine batch discharges;
 - (B) Description of stored chemicals;
 - (C) Procedures for immediately notifying the City of any accidental or slug discharge; and

- (D) Procedures to prevent adverse impact from any accidental or slug discharge. Procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (4) Users shall notify the City immediately after the occurrence of a slug or accidental discharge of substances regulated by Chapters 15.20 through 15.80. The notification shall include location, date and time of discharge, type of waste, concentration and volume, and corrective actions. Any affected user shall be liable for any expense, loss, or damage incurred by the City, in addition to the amount of any penalties imposed on the City as a result of the discharge.
- (5) Within five days following an accidental discharge, the user shall submit to the City a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. The notification does not relieve the user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the sewage system, fish kills, or any other damage to person or property. The notification does not relieve the user of any fines, civil penalties, or other liability that may be imposed by Chapters 15.20 through 15.80 or other applicable law.
- (6) Signs shall be permanently posted in conspicuous places on the user's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures.

15.20.080 Septic Tank Wastes

- (1) Septic tank waste may be introduced into the sewage system only at a designated receiving structure within the treatment plant area, and only at times designated by the City. Those wastes must comply with Chapters 15.20 through 15.80 and all other requirements imposed by the City. Wastewater discharge licenses for individual vehicles to use the facilities shall be issued by DEQ. Licenses must be current, up to date, in good standing, and have obtained testing and approval by the City before discharge will be allowed.
- (2) Septic tank waste haulers may only discharge loads at locations specifically designated by the City. The City may require the hauler to provide a waste analysis of any load prior to discharge.
- (3) Septic tank waste haulers must provide a City waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste

hauler, license number, truck identification, sources of waste, and volume and characteristics of waste.

15.20.085 Permits

- (1) No significant industrial user (SIU) may discharge wastewater into the sewage system without first applying for and obtaining a wastewater discharge permit from the City. Any violation of the terms and conditions of a wastewater discharge permit is a violation of this Chapter. Obtaining a wastewater discharge permit does not relieve a permittee of the obligation to comply with all Federal and State pretreatment standards and requirements or with any other requirements of Federal, State, and local law.
- (2) The City may require other users, including those delivering trucked waste, to obtain wastewater discharge permits to carry out the purposes of this ordinance.

CHAPTER 15.30 WASTEWATER DISCHARGE PERMITS

15.30.010 Existing SIU

Any SIU that does not currently have a wastewater discharge permit must cease discharges until a wastewater discharge permit is obtained.

15.30.020 New Sources and New User

Any new source and any new user that is an SIU must apply for a wastewater discharge permit at least 90 days before startup and may not discharge until its wastewater discharge permit is issued. New sources and new users must include in their application information on the method of pretreatment they intend to use to meet applicable pretreatment standards.

15.30.030 Application Contents

All users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. Submitting the following information complies with 40 CFR §403.12(b).

- (1) Identifying information The user shall submit the name and address of the facility including the name of the operator and owners;
- (2) Permits The user shall submit a list of all environmental control permits held by or for the facility;
- (3) Description of operations The user shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by the Industrial User, including a list of all raw materials

and chemicals used or stored at the facility which are or could accidentally or intentionally be discharged to the sewage system; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the sewage system from the regulated or manufacturing processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

(4) Flow Measurement.

(A) Categorical User:

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the sewage system from each of the following:

- (1) Regulated or manufacturing process streams; and
- (2) Other streams as necessary to allow use of the combined wastestream formula [40 CFR §403.6(e)].

(B) Non-Categorical User

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the sewage system from each of the following:

- (1) Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the Director of Public Works. The City may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) Measurements of pollutants.

(A) Categorical User:

- (i) The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.
- (ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the Categorical Pretreatment Standard or as required by the City) of regulated pollutants in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or

pollution prevention alternative, the User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard. Sampling performed shall conform to sampling and analytical procedures required by Chapters 15.20 through 15.80.

- (iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
- (iv) Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR §403.6(e) for a categorical user, this adjusted limit along with supporting data shall be submitted as part of the application.

(B) **Non-Categorical Significant Industrial User (SIU)**

- (i) The user shall identify the applicable pretreatment standards for its wastewater discharge.
- (ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration in the discharge (or mass where required by the City) of regulated pollutants, as appropriate. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures required by Chapters 15.20 through 15.80.
- (iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(6) **Certification.**

The user shall submit a statement that has been reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether the applicable Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required for the user to meet the applicable Pretreatment Standards and Requirements.

(7) **Compliance Schedule.**

If additional pretreatment and/or O & M will be required to meet the applicable Pretreatment Standards, the user shall submit the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The user's schedule shall conform to the requirements of Chapters 15.20 through 15.80. The completion date in this schedule shall not be later than the compliance date established by Chapters 15.20 through 15.80.

- (A) Where the user's categorical Pretreatment Standard has been modified by a removal allowance (40 CFR §403.7), the combined waste stream formula (40 CFR §403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR

§403.13) at the time the user submits the report required by this paragraph, the information required by this Section shall pertain to the modified limits.

(B) If the categorical Pretreatment Standard is modified by a removal allowance (40 CFR §403.7), the combined waste stream formula (40 CFR §403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR §403.13) after the user submits the report required by this section, then a report containing modified information shall be submitted by the user within 60 days after the new limit is approved.

(8) **Submittal of Information.** The user shall submit any other information as may be deemed necessary by the City to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

15.30.040 Signatory and Certification Requirement

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

15.30.050 Wastewater Discharge Authorizations

The City may use alternate control mechanisms to control wastewater being discharged into the City's sewage system. These control mechanisms may include Best Management Practice (BMP) or a General Control Permit.

15.30.060 Wastewater Discharge Permit Decisions

The City will evaluate the data furnished by the user and may require additional information. Within 60 days of receipt of a complete wastewater discharge permit application, the City will determine whether or not to issue a wastewater discharge permit. The permit shall be issued within 60 days of full evaluation and acceptance of the data furnished if all requirements are complied with. The City may deny any application for a wastewater discharge permit that does not meet applicable standards or that lacks sufficient information.

15.30.070 Wastewater Discharge Permit Contents

Wastewater discharge permits shall include conditions as to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the sewage system.

- A. Wastewater discharge permits must contain the following conditions:
- (1) A statement that indicates wastewater discharge permit duration not to shall exceed 5 years;
 - (2) A statement that the wastewater discharge permit is non-transferable without prior notification to and approval from the City, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
 - (3) Effluent limits, including Best Management Practices, based on applicable pretreatment standards and requirements, including any special State requirements;
 - (4) Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type based on Federal, State, and local law;
 - (5) Requirement for immediate notification to the City where self-monitoring results indicate non-compliance;
 - (6) Requirement to report a bypass or upset of a pretreatment facility;
 - (7) Requirements to control slug discharges, if determined by the City to be necessary.
 - (8) Requirement to report immediately to the City all discharges, and facility changes, including slug loadings, that could cause problems to the sewage system;
 - (9) Requirement for the SIU who reports non-compliance to repeat the sampling and analysis and submit results to the City within 30 days after becoming aware of the violation.
 - (10) A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.
- B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:
- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
 - (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

- (3) Requirements for the development and implementation of spill/slug control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the sewage system;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the sewage system;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- (8) Other conditions as deemed appropriate by the City to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

15.30.080 Appeals

Any person, including the user, may petition the City to reconsider the terms of a wastewater discharge permit or the denial of a wastewater discharge permit within 30 days of its issuance or denial. A wastewater discharge permit or notice of denial of such permit shall contain notice of the petition for review procedures that a person may follow to obtain administrative review of the permit decision.

- A. Failure to submit a timely petition for review waives any right to an administrative appeal.
- B. A petition for review shall be in writing and served either in person or by certified mail to the City. In its petition, the appealing party must specify the name and address of the person filing the petition for review, the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- D. The City shall conduct a hearing to determine the merits of the petition. Prior to the hearing, the person conducting the hearing shall notify the petitioner of the time and place of the hearing, and that the petitioner will have the opportunity to present evidence and make statements in support of the appeal. The person conducting the hearing shall have the sole discretion to determine the amount of time allowed for the appeal hearing. The person conducting the hearing may rely on any relevant evidence provided by city staff, or obtained by any other reasonable means. The decision on the hearing shall be in writing. If the City fails to make a determination on the petition within 30 days, the petition shall be

deemed to be denied, and the permit denial or permit conditions appealed from shall be the final decision of the City.

- E. The decision on the petition for review is the final decision of the City. The final decision may only be challenged under the Writ of Review provisions of Oregon Law.

15.30.090 Duration

Wastewater discharge permits shall be issued for a specified time period, not to exceed five years. A wastewater discharge permit may be issued for a period less than five years, at the discretion of the City. Each wastewater discharge permit will indicate its expiration date.

15.30.100 Modification

The City may modify a wastewater discharge permit for good cause including, but not limited to, the following:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the sewage system that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the sewage system, City personnel, or the receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;
- G. Revision of categorical pretreatment standards pursuant to 40 CFR §403.13;
- H. To correct typographical or other errors in the wastewater discharge permit; or
- I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

15.30.110 Transfer

Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least 90 days advance notice to the City and the City approves the transfer. The notice must include a written certification by the new owner and/or operator that:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. State the date on which the transfer is to occur; and

- C. Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date of the transfer.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

Provided that the notice required above occurred and that there were no significant changes to the manufacturing operation or wastewater discharge, the new owner will be considered an existing user and will be covered by the existing limits and requirements in the previous owner's permit.

15.30.120 Revocation

Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

- A. Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the City of changed conditions;
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the City timely access to the facility premises and records;
- G. Failure to meet discharge limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of a permitted facility; or
- M. If the City has to invoke its emergency provision.
- N. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

15.30.130 Reissuance

A user who is required to have a wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application, at least 90 days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified

herein shall be deemed to have an effective wastewater discharge permit until the City issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to timely submit its re-application will be deemed to be discharging without a wastewater discharge permit.

CHAPTER 15.40 WASTEWATER REPORTING REQUIREMENTS

15.40.010 Baseline Monitoring Reports

- A. Within either 180 days after the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 CFR §403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the sewage system, shall submit to the City a report which contains the information listed in paragraph B below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the City a report that contains the information listed in paragraph B below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.
- B. Users described above shall submit the information set forth below.
- (1) **Identifying Information.** The name and address of the facility, including the name of the operator and owner.
 - (2) **Environmental Permits.** A list of any environmental control permits held by or for the facility.
 - (3) **Description of Operations.** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) **Flow Measurement.** Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) **Measurement of Pollutants.**
 - (a) The categorical pretreatment standards applicable to each regulated process.
 - (b) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the City) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires

compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Pretreatment Standard necessary to determine the compliance status of the User.

- (c) Sampling must be performed in accordance with procedures required by Chapters 15.20 through 15.80. Samples should be taken immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.5(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the City.
- (6) **Certification**. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment, is required to meet the pretreatment standards and requirements.
- (7) **Compliance Schedule**. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section must meet the requirements of Chapters 15.20 through 15.80.
- (8) **Signature and Certification**. All baseline monitoring reports must be signed and certified as required by this Chapter

15.40.020 Final Compliance Report

- A. Within 90 days following the date for final compliance of an existing Significant Industrial User with applicable pretreatment standards and requirements set forth in this ordinance, in federal categorical standards, or in a wastewater discharge permit, or, in the case of a new source or a new user considered by the City to fit the definition of SIU, within 90 days following commencement of the introduction of wastewater into the sewage system, the affected user shall submit to the City a report containing the information outlined in Section 4A.15.005.
- B. For users subject to equivalent mass or concentration limits established by the City in accordance with procedures established in 40 CFR §403.6 (c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

15.40.030 Periodic Compliance Report

- A. Any user that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to the City during the months of June and December, unless the City has determined that the self-monitoring may be reduced to report no less frequently than once a year, or unless required more frequently in the Pretreatment Standard or by the DEQ, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. A reporting form will be provided by the City. At a minimum, users shall sample their discharge at least twice per year, unless required less frequently as described above. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by City to determine the compliance status of the User.
- B. Periodic Compliance Reports are to be postmarked or received by the Industrial Pretreatment Department by on or before the 15th of the month following the conclusion of the reporting period.
- C. The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations and shall also include any additional information required by this ordinance or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the City or by this ordinance, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period. All laboratory reports providing data for organic and metal parameters shall include the following information: sampling date, sample location, date of analysis, parameter name, CAS number, analytical method/ number, method detection limit (MDL), laboratory practical quantitation limit (PQL), reporting units, and concentration detected. Analytical results from samples sent to a contracted laboratory must have information on the chain of custody, the analytical method, QA/QC results, and documentation of accreditation for the parameter.
- D. The City may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User.

- E. Any user subject to equivalent mass or concentration limits established by the City or by unit production limits specified in the applicable categorical standards shall report production data.
- F. If the City calculated limits to factor out dilution flows or non-regulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and non-regulated flows.
- G. Flows shall be reported on the basis of actual measurement, provided, however, that the City may accept reports of average and maximum flows estimated by verifiable techniques if the City determines that an actual measurement is not feasible.
- H. Discharges sampled shall be representative of the user's daily operations and samples shall be taken in accordance with this Title. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.
- I. The City may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the sewage system.
- J. The City may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the City agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the City for the sampling and analyses. The user may be charged for the cost of resampling by the City in the event of a violation or violations. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The City is under no obligation to perform periodic compliance monitoring for a user.
- K. Users that have approved monitoring waivers as to specific pollutants must certify on each report that there has been no increase in the specific pollutant in the wastestream due to activities of the User. The certification shall be in the following form:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Parts], I certify that, to the best of my knowledge and belief, there has been no increase in the level of

_____ [list pollutant(s)] in the wastewaters due to the activities at the facility since the filing of the most recent report.

15.40.040 Pretreatment Standards Compliance Schedules

- A. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- B. No increment referred to in paragraph A of this Section shall exceed 9 months.
- C. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports.

15.40.050 Notification of Significant Production Changes

Any user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the City within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month.

15.40.060 Hazardous Waste Notification

Any user discharging more than 15 kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one-time notification in writing to the City, to the EPA Region 10 Office of Waste and Chemicals Management Director, and to DEQ. Any existing user exempt from this notification shall comply with the requirements contained herein within 30 days of becoming aware of a discharge of 15 kilograms of hazardous wastes in a calendar month or any discharge of acutely hazardous wastes to the City sewage system. The notification shall include:

- A. The name of the hazardous waste as set forth in 40 CFR Part 261,
- B. The EPA Hazardous waste number; and
- C. The type of discharge (continuous, batch, or other).
- D. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the sewage system, the notification shall also contain the

following information to the extent it is known or readily available to the industrial user:

- (1) an identification of the hazardous constituents contained in the wastes,
- (2) an estimation of the mass and concentration of such constituents in the wastestreams discharged during that calendar month, and
- (3) an estimation of the mass of constituents in the wastestreams expected to be discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-monitoring requirements.

Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a user shall notify the City of the discharge of such a substance within 90 days of the effective date of the regulations.

In the case of any notification made under this paragraph, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

15.40.070 Notice of Potential Problems

A user shall notify the City immediately of all discharges and changes at the facility that could cause adverse impacts to the sewage system, including any slug loads. The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. Any user who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the sewage system, in addition to the amount of any fines imposed on the City under state or federal law.

15.40.080 Non-Compliance Reporting

If sampling performed by a user indicates a violation, the user shall notify the City within 24 hours of becoming aware of the violation. The user shall also repeat the sampling within five days and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation, except the user is not required to resample if:

- A. The City performs sampling at the user at a frequency of at least once per month, or
- B. The City performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

15.40.090 Notification of Changed Discharge

All users shall promptly notify the City in advance of any substantial change in the volume or any change in character of pollutants in their discharge, including significant

manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12 (p). Substantial change is defined to mean a change of 10% or more in discharge volume.

15.40.100 Reports from Unpermitted Users

All users not required to obtain a wastewater discharge permit shall provide reports when and if required in writing by the City.

15.40.110 Record Keeping

Users subject to the reporting requirements of this ordinance, including documentation associated with Best Management Practices, shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five years. This period shall be automatically extended for the duration of any litigation concerning the user or the sewage system or where the user has been notified in writing of a longer retention period by the City.

15.40.120 Annual Certification

A. A facility determined to be Non-Significant Categorical Industrial User must annually submit the following certification statement. This certification must accompany an alternative report required by the City:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that (a) during the period from _____, _____ to _____, _____ [months, days, year], the facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User; (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon information provided elsewhere in this document.

B. A non-discharging categorical industrial user must annually submit the following certification statement.

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year] (a) The facility described as _____ [facility name] met the definition of a non-discharging categorical Industrial User as described in Section 4.412 (42); (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged categorical wastewater on any given day during this reporting period. This compliance certification is based upon information provided elsewhere in this document.

CHAPTER 15.50 SAMPLING AND ANALYTICAL REQUIREMENTS

15.50.010 General Requirements

All sample preservation procedures, container materials, maximum allowable holding times and analytical techniques to be submitted as part of any application or report required by this division shall be performed in accordance with the procedures and techniques specified in 40 CFR Part 136. Alternatively, a contractor with the required protocols listed in an approved comprehensive Quality Assurance Plan may sample and analyze according to the protocols specified in that document.

15.50.020 Sampling

A. Sampling for Baseline Monitoring Reports (BMR) and 90-day compliance reports must include a minimum of four grab samples for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist. The City may authorize a lower minimum for facilities with historical sampling data. The numbers of grab samples for Periodic Compliance Reports shall be the number the City determines to be necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

The City will determine on a case-by-case whether the user will be able to composite the individual grab samples. For all other pollutants, 24-hour composite samples must be obtained through flow or time-proportional composite sampling techniques, depending on circumstances. The City may waive flow-proportional composite sampling for any user that demonstrates that flow-proportional composite sampling is infeasible. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge and the decision to allow the alternative

sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate.

In those cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

- B. Samples shall be taken immediately downstream from any pretreatment facilities, immediately downstream from the regulated or manufacturing process if no pretreatment exists, or at a location determined by the City and specified in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR §403.6(e) in order to evaluate compliance with the Applicable Categorical Pretreatment Standards. For other SIUs, for which the City has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s). In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the City to determine the compliance status of the User
- C. All sample results shall indicate the time, date and place of sampling and methods of analysis and shall certify that the waste stream sampled is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed more frequently than required in its wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

15.50.030 Analytical Requirements

All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

15.50.040 City Monitoring

The City will follow the procedures outlined in Sections 15.50.020 and 15.50.030 when sampling to monitor compliance.

CHAPTER 15.60 WASTEWATER COMPLIANCE MONITORING

15.60.010 Inspection and Sampling

The City shall have the right to enter the facilities of any user to ascertain compliance with this Title and any wastewater discharge permit or order. Users shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where a user has security measures in force that require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, on presentation of suitable identification, City representatives will be permitted to enter without delay for the purposes of performing their responsibilities under this Title.
- B. The City shall have the right to set up or require to be set up monitoring and sampling devices on the user's property to monitor compliance with this Title.
- C. Any obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the City and shall not be replaced unless and until authorized in writing by the City. The user is responsible for the cost of clearing obstructions.
- D. Unreasonable delays in allowing the City access to the user's premises shall be a violation of this Title.

15.60.020 Monitoring Facilities

Each user shall provide and operate at its own expense a monitoring facility (including installation of a wastewater sample port), to allow inspection, sampling, continuous monitoring and flow measurements of each sewer discharge to the City in all commercial/ industrial areas. Each monitoring facility shall be situated on the user's premises, except, where such a location would be impractical or cause undue hardship on the user, the City may concur with the facility being constructed in the public street or sidewalk area, providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. The City may require the construction and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line or a wastewater treatment system).

There shall be ample room in or near sampling facilities to allow accurate sampling and preparation of samples for analysis. The facility, including the sampling and measuring

equipment, shall be maintained at all times in a safe and proper operating condition at the user's expense.

The City may require the user to install monitoring equipment as necessary. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications.

All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

15.60.030 Search Warrants

If the City has been refused access to a building, structure or property, or any part thereof and is able to demonstrate probable cause to believe that there may be a violation of this Title, or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this ordinance or any wastewater discharge permit or order, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search and/or seizure warrant from the Bend Municipal Court. The warrant shall be served at reasonable hours by the City in the company of a uniformed City police officer.

15.60.040 Vandalism

No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the sewage system.

15.60.050 Confidential Information

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from City inspection and sampling activities shall be available to the public without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, except when disclosure is required by the Oregon Public Records Law. Information shall be made available immediately upon request to governmental agencies for uses related to the WPCF permit or pretreatment program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" will not be recognized as confidential information.

15.60.060 Users in Significant Non-Compliance

The City shall publish annually, pursuant to 40 CFR, 403.8 (D) (viii) in a newspaper of general circulation in the City, a list of the industrial users that, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. For the purposes of this provision, a significant industrial user or any Industrial User which violates paragraphs (C), (D), or (H) of this section is in significant noncompliance if its violation meets one or more of the following criteria:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a six (6-)month period (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l) ;
- B. Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a six-(6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable criteria [1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH];
- C. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard)that the City believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel or the general public);
- D. Any discharge of pollutants that have caused imminent endangerment to the public or to the environment, or have resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report non-compliance; or
- H. Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

CHAPTER 15.70 ENFORCEMENT

15.70.010 Notice of Violation

When the City finds that a user has violated or continues to violate any provision of Chapters 15.20 through 15.80, a wastewater discharge permit or order, or any other

pretreatment standard or requirement, in addition to other remedies provided by this ordinance, the City may serve that user with a written Notice of Violation via certified mail. Within five days of the receipt of the notice, an explanation of the violation and a plan for the satisfactory correction and prevention, to include specific required actions, shall be submitted by the user to the City. Submission of the correction plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Chapter shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

15.70.020 Consent Orders

The City may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Those documents will include specific action to be taken by the user to correct the non-compliance within a time period specified by the document.

The documents shall have the same force and effect as administrative orders issued under this Chapter and shall be judicially enforceable. Use of a consent Order shall not be a bar against, or prerequisite for, taking any other action against the user.

15.70.030 Show Cause Hearing

The City may, in addition to other remedies, order a user that has violated or continues to violate any provision of this title, a wastewater discharge permit or order, or any other pretreatment standard or requirement, to appear before the City and show cause why the proposed enforcement action should not be taken. The notice shall include the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing. The notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

15.80.040 Compliance Orders

When the City finds that a user has violated or continues to violate any provision of Chapters 15.20 through 15.80, a wastewater discharge permit or order, or any other pretreatment standard or requirement, the City may, in addition to other remedies provided by this ordinance, issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time specified in the order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the non-compliance, including additional self-

monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

15.70.050 Cease and Desist Orders

When the City finds that a user has violated (or continues to violate) any provision of Chapter 15.20 through 15.80, a wastewater discharge permit or order, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the City may, in addition to other remedies provided by this ordinance, issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take appropriate remedial or preventive action needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

15.70.060 Emergency Suspensions

The City may immediately suspend a user's discharge permit when suspension is necessary to stop an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the human health or welfare. The City may immediately suspend a user's discharge permit after notice and opportunity to respond if the discharge threatens to interfere with the operation of the sewage system or may endanger the environment.

- A. Any user notified of a suspension of its discharge permit shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City may take steps, including immediate severance of the sewer connection, to prevent or minimize damage to the sewage system or endangerment to any individuals. The City shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings of this title are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City prior to the date of any show cause or termination hearing.

Nothing in this Chapter shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

15.70.070 Termination of Discharge Permit (Non-Emergency)

Any user that violates the following conditions is subject to discharge permit termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- E. Violation of the pretreatment standards in Section 4.415 – 4.426 of this ordinance.

The user will be notified of the proposed termination of its discharge permit and be offered an opportunity to show cause why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the user.

15.70.080 Administrative Penalties

- A. When the City finds that a user has violated or continues to violate any provision of Chapters 15.20 through 15.80 a wastewater discharge permit or order, or any other pretreatment standard or requirement, the City may assess a penalty against the user in an amount not to exceed \$6250.

The penalty may be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, penalties shall be assessed for each day during the period of violation.

- B. Users desiring to dispute the penalty must file a written request for the City to reconsider the penalty along with full payment of the penalty amount within 30 days of being notified of the penalty. Where a request has merit, the City Works shall convene a hearing on the matter within 60 days of receiving the request from the user. In the event the user's appeal is successful, the payment, together with interest, shall be returned to the user. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the penalty.
- C. Issuance of an administrative penalty shall not be a bar against, or a prerequisite for, taking any other action against the user.

15.70.090 Injunctive Relief

When the City finds that a user has violated (or continues to violate) any provision of Chapters 15.20 through 15.80, a wastewater discharge permit, or order, or any other pretreatment standard or requirement, the City may petition the Circuit Court for Deschutes County through the City Attorney for the issuance of a temporary or permanent injunction, as appropriate, to restrain or compel the specific performance of the wastewater discharge permit, order, or other requirement imposed by this title on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

15.70.100 Judicially Imposed Civil Penalties

- A. Violation of any provision of Chapters 15.20 through 15.80, a wastewater discharge permit or order, or any other pretreatment standard or requirement is a civil infraction with a maximum civil penalty of \$2500 per violation, for each day the violation persists. The violation shall be enforced through the civil infraction procedures of this code. In a proceeding under this section, the City shall not be required to prove that the user has acted intentionally, knowingly or willfully. The City shall be required to prove that the violation occurred, but the user's mental state shall not be an element of proving the violation.
- B. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City, in addition to the civil penalty.
- C. In determining the amount of the civil penalty, the Municipal Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Initiation of a civil infraction proceeding shall not be a bar against, or a prerequisite for, taking any other action against a user.

15.70.110 Criminal Prosecution

- A. Intentional, willful or knowing violation any provision of Chapters 15.20 through 15.80, a wastewater discharge permit or order, or any other pretreatment standard or requirement is a Class A misdemeanor, punishable by a fine of not more than \$6,250 per violation, per day, or imprisonment for not more than one year, or both.

- B. Intentional, willful or knowing introduction of any substance into the sewage system that causes personal injury or property damage is a Class A misdemeanor punishable by a maximum penalty of not more than \$6,250 and/or one year in prison. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law. Nothing in this ordinance precludes prosecution under other criminal statutes, including statutes pertaining to damage to public utilities or injury to property or persons.
- C. The knowing making of any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to Chapters 15.20 through 15.80, wastewater discharge permit or order, or falsification, tampering with, or knowingly rendering inaccurate any monitoring device or method required under this title is a Class A misdemeanor punishable by a fine of not more than \$6,250 per violation per day, or imprisonment for not more than one year, or both.
- D. If the user is a corporation, the penalty provisions of ORS 161.655 shall be applicable. An employee, officer or agent of a corporation that commits a misdemeanor under this Chapter may be prosecuted in that person's individual capacity, and, upon conviction, be personally subject to the penalties provided under this section if the person committed the offense intentionally, knowingly or willfully, notwithstanding that the permit was issued in the name of a corporation.

15.70.120 Remedies Non-exclusive

The remedies provided by this Chapter are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement in response to pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

15.70.130 Performance Bonds

The City may decline to issue or reissue a wastewater discharge permit to any user that has failed to comply with any provision of this title, a wastewater discharge permit or order, or any other pretreatment standard or requirement unless the user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance.

15.70.140 Liability Insurance

The City may decline to issue or reissue a wastewater discharge permit to any user that has failed to comply with any provision of this title, a wastewater discharge permit or order, or any other pretreatment standard or requirement, unless the user first submits

proof that it has obtained insurance or other financial assurances satisfactory to the City sufficient to restore or repair damage to the sewage system that may be caused by its discharge.

15.70.150 Water Supply Discontinuance

The City may discontinue water service to a user that for violation of any provision of this title, a wastewater discharge permit or order, or any other pretreatment standard or requirement. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. The user shall be required to reimburse the City for expenses incurred for disconnecting service. Any person, including the user, may petition the City to reconsider the terms of water supply severance within 30 days of termination or notice of termination.

15.70.160 Administrative Review of Permit

A wastewater discharge permit or notice of denial of the permit shall contain notice of the petition for review procedures that a person may follow to obtain administrative review of the permit decision.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. A petition for review shall be in writing and filed with the City Manager's office. In the petition, the appealing party must specify the name and address of the person filing the petition for review, the reasons for this objection
- C. The City Manager shall conduct a hearing to determine the merits of the petition. Prior to the hearing, the person conducting the hearing shall notify the petitioner of the time and place of the hearing, and that the petitioner will have the opportunity to present evidence and make statements in support of the appeal. The person conducting the hearing shall have the sole discretion to determine the amount of time allowed for the appeal hearing. The person conducting the hearing may rely on any relevant evidence provided by city staff, or obtained by any other reasonable means. The decision on the hearing shall be in writing. If the City fails to make a determination on the petition within 30 days, the petition shall be deemed to be denied, and the permit denial or permit conditions appealed from shall be the final decision of the City.
- D. The decision on the petition for review is the final decision of the City. The final decision may only be challenged under the Writ of Review provisions of Oregon Law.

15.70.170 Public Nuisances

A violation of any provision of this title, a wastewater discharge permit, or order, or any other pretreatment standard or requirement, is a public nuisance and may be corrected or abated as provided by this Code.

15.70.180 Informants

The City may pay up to 100% of any collected fine or penalty imposed by Municipal Court, to a maximum amount of \$1,000, to an informant, subject to reduction by the amount of any assessments required by state law.

15.70.190 Contractor Listing

Users that have not achieved compliance with applicable pretreatment standards and requirements are not eligible to enter into contracts for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a user found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of the City.

15.70.200 Affirmative Defense of Upset

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought under Chapter 4A.35 for non-compliance with applicable pretreatment standards if the requirements of paragraph C of this Section are met. The affirmative defense of "upset" shall not be applicable to enforcement actions under any provision of this ordinance other than those provided in Chapter 4A.35, although facts indicating that an upset occurred may be considered in determining the appropriate remedy under enforcement proceedings other than those provided in Chapter 4A.35.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user has submitted the following information to the City within 24 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five days.
 - (a) A description of the indirect discharge and cause of non-compliance;
 - (b) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and

- (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.
- D. In any enforcement proceeding under Chapter 4A.35, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with applicable pretreatment standards under Chapter 4A.35.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

15.70.210 Affirmative Defense – Lack of Knowledge

A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibited discharge standards if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its WPCF permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

15.70.220 Affirmative Defense - Bypass

- A. For the purposes of this section,
 - (1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs C and D of this section.

C. Notice of Bypass

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the City at least 10 days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The City may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. Bypass Conditions

- (1) Bypass is prohibited, and the City may take an enforcement action against a user for a bypass, unless
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The user submitted notices as required under paragraph (C) of this section.
- (2) The City may approve an anticipated bypass, after considering its adverse effects, if the City determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

CHAPTER 15.80 WASTEWATER FEES

15.80.010 Fees

All persons receiving sewer services shall pay the fees established by Council resolution. Fees shall be set at an amount to cover the City's costs relating to the service for which the fee is paid. Fees may include:

- (1) Fees for wastewater services. The fees for wastewater services may include a component or additional charge based on the strength of the discharge.

- (2) Fees for wastewater discharge permit applications including the cost of processing such applications;
- (3) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;
- (4) Fees for reviewing and responding to accidental discharge procedures and construction;
- (5) Fees for filing appeals; and
- (6) Other fees as the City may deem necessary to carry out the requirements of this title. These fees relate solely to the matters covered by this title and are separate from all other fees, fines, and penalties chargeable by the City.