TITLE IX: GENERAL REGULATIONS

Chapter

CHAPTER 90: STREETS AND SIDEWALKS

Section

Cross-reference:

Nuisances affecting public safety, see § 91.16
Obstruction and use of public ways, see §§ 133.15 et seq.

SIDEWALK MAINTENANCE AND REPAIR

§ 90.01 DUTY OF LANDOWNERS.

It shall be the duty of all landowners in the city to comply with the following:

(A) Maintain in good repair all sidewalks now existing or hereafter constructed in front of, along, or abutting their land. An existing sidewalk shall be considered in a state of disrepair when the condition or defect would create a danger to pedestrians. These conditions shall include, but are not limited to, breakage, cracks, upheaval, irregular surfaces, vertical or horizontal dislocation at joints, degraded or deteriorated composition of concrete materials, accumulation of moss or other organic growths, and other visible hazards; and

(B) Remove any obstacle or obstruction to any sidewalk abutting or located on the owner's property and maintain and afford to the public continuous and unobstructed access to the sidewalk.
(Ord. 109-97, passed 12-4-1997) Penalty, see § 10.99

§ 90.02 PERMIT REQUIRED.

Before making any sidewalk repairs, the landowner responsible shall apply to the City Manager for a repair permit. The permit shall describe the location of the sidewalk to be repaired, a description of the property abutting that sidewalk, the name of the adjacent property owners, the type or kind of repairs to be made, and a time limit in which the repairs are to be completed, not to exceed 60 days from the date of the permit. A sidewalk permit fee may be charged subject to authorization by the City Council.
(Ord. 109-97, passed 12-4-1997) Penalty, see § 10.99

§ 90.03 NOTICE TO REPAIR.

(A) If any landowner responsible for repairing any sidewalk fails or refuses to apply for a sidewalk repair permit, then the City Manager may deliver a notice to repair to that owner.

(B) The above-named notice shall comply with the following:

(1) The notice may be sent by certified mail, with return receipt requested, to the last known address of the owner as may appear in the records of the City Recorder or the County Assessor's office. The notice shall contain the name(s) of the owner(s) of the property responsible for making any sidewalk repairs, the location of the sidewalk to be repaired, a description of the property abutting the sidewalk, the type or kind of repairs to be made, the time limit in which the repairs are to be made, a reference to this chapter, the date of the notice, and the signature of the city official giving the notice; and

(2) If any notice which is mailed is not receipted by the owner or is returned by the post office department because the owner cannot be located, then the City Manager shall post a copy of the notice for a period of not less than 10 days in a conspicuous place on the subject property. The City Manager shall record within the notice file the date the original notice was delivered or mailed, the name and address of the person to whom it was delivered or mailed, and the date and place the notice was posted, if posting is required.
(Ord. 109-97, passed 12-4-1997) Penalty, see § 10.99

§ 90.04 EXPENSE; STANDARDS; TIME LIMITS.

All sidewalk construction or repairs shall comply with the following requirements:

(A) The improvements shall be made at the expense of the landowner responsible for making the improvements;

(B) All improvements shall be made in accordance with sidewalk construction standards adopted by the Department of Public Works;

(C) No sidewalk construction or repair shall be accepted by the city until the improvements are inspected and accepted by the Department of Public Works. Sidewalks that fail to comply with city standards shall be corrected prior to acceptance; and

(D) All improvements shall be completed within the established time limit. Time limits for sidewalk improvements may be extended by the City Manager on the application of the owner, and on good cause being shown for the granting of an extension.
(Ord. 109-97, passed 12-4-1997) Penalty, see § 10.99

§ 90.05 REPAIR BY CITY; ASSESSMENT OF COSTS.

If any landowner responsible for making sidewalk repairs fails to make the repairs in the manner, and in the time established by the city, the City Council may direct the City Manager to complete the repairs, or the Council may, if it elects, let a contract for making the repairs. After the cost of making the repairs has been determined, the City Manager shall report the same to the City Council, and the Council by resolution direct the City Manager to enter the amount plus 20% for administrative, legal, and engineering expenses in the docket of the city liens, as an assessment against the subject property. The lien document shall include the date of entry, the name of the owner, and a description of the property assessed. The assessment shall thereafter be collected in the manner prescribed by O.R.S. 223.505 - 223.595, and all assessments docketed as liens shall draw interest at the rate of 9% per year from the date of the entry in the city lien docket until paid.
(Ord. 109-97, passed 12-4-1997) Penalty, see § 10.99

§ 90.06 OWNER LIABILITY.

The owners of all property responsible for repairing sidewalks as provided in this chapter shall be liable in damages to individuals injured because of any negligence of the owners in failing to keep a sidewalk in good condition, and no liability shall be imputed to or imposed upon the city, or its officers or employees, because of injuries sustained by any person by reason of defect in any sidewalk, nor because of any extension of time having been granted by the city for repairing any defects in sidewalks.
(Ord. 109-97, passed 12-4-1997)

USE AND OBSTRUCTION OF PUBLIC WAYS

§ 90.20 BASKETBALL HOOPS PROHIBITED IN PUBLIC RIGHTS-OF-WAY.

(A) *Prohibition; removal required.* No basketball hoops will be allowed in any public right-of-way within the city. This section applies not only to those that may be erected in the future, but also to those hoops currently emplaced.

(B) *Violations; remedies.* The imposition of a penalty does not relieve a person of the duty to rectify a violation.
(Ord. 93, passed 6-15-1995) Penalty, see § 10.99

UTILITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

§ 90.30 TITLE.

This subchapter shall be known as the "Utility Facilities in Public Rights-of-Way Ordinance".
(Ord. 148-2010, passed 12-14-2010)

§ 90.31 PURPOSE AND INTENT.

The purpose and intent of this subchapter is to:

(A) Permit and manage reasonable access to the rights-of-way of the city for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the city consistent with applicable state and federal law;

(B) Assure that the city's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;

(C) Secure fair and reasonable compensation to the city and its residents for permitting use of the rights-of-way;

(D) Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the city register and comply with the ordinances, rules and regulations of the city;

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

(F) Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the city; and

(G) Comply with applicable provisions of state and federal law.
(Ord. 148-2010, passed 12-14-2010)

§ 90.32 JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY.

(A) The city has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the City Charter and state law.

(B) The city has jurisdiction and exercises regulatory management over each right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

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

(D) The provisions of this subchapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.
(Ord. 148-2010, passed 12-14-2010)

§ 90.33 REGULATORY FEES AND COMPENSATION NOT A TAX.

(A) The fees and costs provided for in this subchapter, and any compensation charged and paid for use of the rights-of-way provided for in this subchapter, are separate from, and in addition to, any and all other federal, state, local, and city charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

(B) The city has determined that any fee or tax provided for by this subchapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

(C) The fees and costs provided for in this subchapter are subject to applicable federal and state laws.
(Ord. 148-2010, passed 12-14-2010)

§ 90.34 DEFINITIONS.

For the purpose of this subchapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words ***SHALL*** and ***WILL*** are mandatory and ***MAY*** is permissive.

CABLE SERVICE. Defined consistent with federal laws and means the one-way transmission to subscribers of:

(1) Video programming; or

(2) Other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CITY. The City of Donald, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

CITY COUNCIL. The elected governing body of the City of Donald, Oregon.

CITY FACILITIES. City or publicly-owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

COMMUNICATIONS SERVICES. Any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. ***COMMUNICATIONS SERVICE*** includes all forms of telephone services and voice, video, data or information transport, but does not include:

(1) Cable service;

(2) Open video system service, as defined in 47 C.F.R. 76;

(3) Private communications system services provided without using the public rights-of-way;

(4) Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and

(5) Direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

LICENSE. The authorization granted by the city to a utility operator pursuant to this subchapter.

PERSON. Includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association or other organization, including any natural person or any other legal entity.

PRIVATE COMMUNICATIONS SYSTEM. A system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. ***PRIVATE COMMUNICATIONS SYSTEM*** includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

PUBLIC UTILITY EASEMENT. The space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. ***PUBLIC UTILITY EASEMENT*** does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the city.

RIGHT-OF-WAY. Includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the city's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

STATE. The State of Oregon.

UTILITY FACILITY or FACILITY. Any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

UTILITY OPERATOR or OPERATOR. Any person who owns, places, operates or maintains a utility facility within the city.

UTILITY SERVICE.

(1) The provision of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to customers within the corporate boundaries of the city; and/or

(2) The transmission of any of these services through the city, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider and whether or not customers within the city are served by those transmissions.

WORK. The construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.
(Ord. 148-2010, passed 12-14-2010)

§ 90.35 LICENSES.

(A) *License required.*

(1) Except those utility operators with a valid franchise agreement from the city, every person shall obtain a license from the city prior to conducting any work in the rights-of-way.

(2) Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this subchapter shall apply for a license from the city within 45 days of the later of:

(a) The effective date of this subchapter; or

(b) The expiration of a valid franchise from the xity, unless a new franchise is granted by the city pursuant to division (E) below.

(B) *License application.* The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this subchapter.

(C) *License application fee.* The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the city's costs related to processing the application for the license.

(D) *Determination by city.* The city shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this subchapter, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

(E) *Franchise agreements.* If the public interest warrants, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this subchapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this subchapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this subchapter to the extent such provisions are not in conflict with any such franchise.

(F) *Rights granted.*

(1) The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City Code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights-of-way for the term of the license.

(2) Any license granted pursuant to this subchapter shall not convey equitable or legal title in the rights-of-way, and may not be assigned or transferred except as permitted in division (K) below.

(3) Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the city as may exist at the time the license is issued or thereafter obtained.

(G) *Term.* Subject to the termination provisions in division (M) below, the license granted pursuant to this subchapter will remain in effect for a term of five years.

(H) *License nonexclusive.* No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the city's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

(I) *Reservation of city rights.* Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in § 90.37(C), (D) and (E), in a manner acceptable to the city and consistent with industry standard engineering and safety codes.

(J) *Multiple services.*

(1) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this subchapter for the portion of the facilities and extent of utility services delivered over those facilities.

(2) A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the city of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

(K) *Transfer or assignment.* To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the city prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

(L) *Renewal.* At least 90, but no more than 180, days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the city, including all information required in division (B) above and the application fee required in division (C) above. The city shall review the application as required by division (D) above and grant or deny the license within 90 days of submission of the application. If the city determines that the licensee is in violation of the terms of this subchapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(M) *Termination.*

(1) *Revocation or termination of a license.* The City Council may terminate or revoke the license granted pursuant to this subchapter for any of the following reasons:

(a) Violation of any of the provisions of this subchapter;

(b) Violation of any provision of the license;

(c) Misrepresentation in a license application;

(d) Failure to pay taxes, compensation, fees or costs due the city after final determination of the taxes, compensation, fees or costs;

(e) Failure to restore the rights-of-way after construction as required by this subchapter or other applicable state and local laws, ordinances, rules and regulations;

(f) Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or

(g) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(2) *Standards for revocation or termination.* In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

(a) The egregiousness of the misconduct;

(b) The harm that resulted;

(c) Whether the violation was intentional;

(d) The utility operator's history of compliance; and/or

(e) The utility operator's cooperation in discovering, admitting and/or curing the violation.

(3) *Notice and cure.* The city shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City Manager or designee determines that the utility operator's response is inadequate, the City Manager or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.
(Ord. 148-2010, passed 12-14-2010)

§ 90.36 CONSTRUCTION AND RESTORATION.

(A) *Construction codes.* The grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in grantor's jurisdiction. The grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the grantor, with the use of said public or private

property by any person. In the event of such interference, grantor may require the removal of grantee's lines, cables and appurtenances from the property in question following 30 day notification to the grantee.

(B) *Injury to persons or property.* A utility operator shall preserve and protect from injury or damage other utility operators' facilities in the rights-of-way, the public using the rights-of -way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to cany out the work.

(C) *Restoration.*

(1) When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the city and as determined by the Public Works Director.

(2) If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the city, the utility operator shall temporarily restore the affected rights- of-way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.

(3) If the utility operator fails to restore rights-of-way or property as required in this subchapter, the city shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten days, unless an emergency or threat to public safety is deemed to exist, and not exceeding 30 days to restore the rights-of-way or property. If, after said notice, the utility operator fails to restore the rights-of-way or property as required in this subchapter, the city shall cause such restoration to be made at the expense of the utility operator.

(D) *Inspection.* Every utility operator's facilities shall be subject to the right of periodic inspection by the city to determine compliance with the provisions of this subchapter and all other applicable state and city codes, ordinances, rules and regulations. Every utility operator shall cooperate with the city in permitting the inspection of utility facilities upon request of the city. The utility operator shall perform all testing, or permit the city to perform any testing at the utility operator's expense, required by the city to determine that the installation of the utility operator's facilities and the restoration of the right-of-way comply with the terms of this subchapter and applicable state and city codes, ordinances, rules and regulations.

(E) *Coordination of construction.* All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the city and other users of the rights-of-way. All construction locations, activities and schedules within the rights-of-way shall be coordinated as ordered by the Public Works Director, to minimize public inconvenience, disruption, or damages.
(Ord. 148-2010, passed 12-14-2010)

§ 90.37 LOCATION OF FACILITIES.

(A) *Location of facilities.* Unless otherwise agreed to in writing by the city, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the city, the utility operator with permission to occupy the same right-of-way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above-ground equipment of any utility operator. The city reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.

(B) *Interference with the rights-of-way.* No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. All use of the rights-of-way shall be consistent with city codes, ordinances, rules and regulations.

(C) *Relocation of utility facilities.*

(1) A utility operator shall, at no cost to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right-of-way, including relocation of aerial facilities underground, when requested to do so in writing by the city.

(2) Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

(3) The city shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the city and by the date reasonably established by the city, the utility operator shall pay all costs incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days.

(D) *Removal of unauthorized facilities.*

(1) Unless otherwise agreed to in writing within 30 days following written notice from the city or such other time agreed to in writing by the city, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right-of-way shall, at its own expense, remove the facility and restore the right-of-way.

(2) A utility system or facility is unauthorized under any of the following circumstances:

(a) The utility facility is outside the scope of authority granted by the city under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the city has provided written authorization for abandonment in place.

(b) The facility has been abandoned and the city has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

(c) The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this subchapter.

(d) The utility operator is in violation of a material provision of this subchapter and fails to cure such violation within 30 days of the city sending written notice of such violation, unless the city extends such time period in writing.

(E) *Removal by city.*

(1) The city retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights-of-way of the city, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The city will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the city's response to the emergency.

(2) If the utility operator fails to remove any facility when required to do so under this subchapter, the city may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the facility and obtaining reimbursement, Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days. The obligation to remove shall survive the termination of the license or franchise.

(3) The city shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the city or its contractor in removing, relocating or altering the facilities pursuant to divisions (B), (C) or (D) above or undergrounding its facilities as required by division (A) above, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those divisions, unless such damage arises directly from the city's negligence or willful misconduct.

(F) *Engineering designs and plans.* The utility operator shall provide the city with two complete sets of engineered plans in a form acceptable to the city showing the location of all its utility facilities in the rights-of-way after initial construction if such plans materially changed during construction. The utility operator shall provide two updated complete sets of as built plans upon request of the city, but not more than once per year.
(Ord. 148-2010, passed 12-14-2010)

§ 90.38 LEASED CAPACITY.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the city with the name and business address of any lessee. A utility operator is not required to provided such information if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.
(Ord. 148-2010, passed 12-14-2010)

§ 90.39 MAINTENANCE.

(A) Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

(B) If, after written notice from the city of the need for repair or maintenance, a utility operator fails to repair and maintain facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days.
(Ord. 148-2010, passed 12-14-2010)

§ 90.40 VACATION.

If the city vacates any right-of-way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right-of-way unless the city reserves a

public utility easement, which the city shall make a reasonable effort to do provided that there is no expense to the city, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within 30 days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the city, the city may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the city, the utility operator shall reimburse the city for the costs the city incurred within 30 days.
(Ord. 148-2010, passed 12-14-2010)

§ 90.41 PRIVILEGE TAX.

(A) Every person that uses utility facilities in the city to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the privilege tax for every utility service provided using the rights-of-way in the amount determined by resolution of the City Council.

(B) Privilege tax payments required by this section shall be reduced by any franchise fee payments received by the city, but in no case will be less than zero dollars.

(C) Unless otherwise agreed to in writing by the city, the tax set forth in division (A) above shall be paid quarterly, in arrears, for each quarter during the term of the license within 30 days after the end of each calendar quarter, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of 9% per year for any payment made after the due date.

(D) The calculation of the privilege tax required by this section shall be subject to all applicable limitations imposed by federal or state law.

(E) The city reserves the right to enact other fees and taxes applicable to the utility operators subject to this subchapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the privilege tax or any other fees required by this subchapter.
(Ord. 148-2010, passed 12-14-2010)

§ 90.42 AUDITS.

(A) Within 30 days of a written request from the city, or as otherwise agreed to in writing by the city:

(1) Every provider of utility service shall furnish the city with information sufficient to demonstrate that the provider is in compliance with all the requirements of this subchapter and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, privilege tax or franchise fee.

(2) Every utility operator shall make available for inspection by the city at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights-of-way or public utility easements. Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the city.

(B) If the city's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the privilege tax or franchise fee by 3% or more in any one year, the utility operator shall reimburse the city for the cost of the audit, in addition to any interest owed pursuant to § 90.41(C) or as specified in a franchise.

(C) Any underpayment, including any interest or audit cost reimbursement, shall be paid within 30 days of the city's notice to the utility service provider of such underpayment.
(Ord. 148-2010, passed 12-14-2010)

§ 90.43 INSURANCE AND INDEMNIFICATION.

(A) *Insurance.*

(1) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the city, as well as the city's officers, agents, and employees:

(a) Comprehensive general liability insurance with limits not less than:

1. Three million dollars for bodily injury or death to each person;

2. Three million dollars for property damage resulting from any one accident; and

3. Three million dollars for all other types of liability.

(b) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.

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

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

(2) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, as additional insureds the city and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled or materially altered without 30 days prior written notice first being given to the city. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the city with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

(3) The utility operator shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.

(B) *Financial assurance.* Unless otherwise agreed to in writing by the city, before a franchise granted or license issued pursuant to this subchapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this subchapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by this subchapter and/or the Development Code.

(C) *Indemnification.*

(1) Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this subchapter or by a franchise agreement, The acceptance of a license under § 90.35 shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

(2) Every utility operator shall also indemnify the city for any damages, claims, additional costs or expenses assessed against or payable by the city arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way or easements in a timely manner, unless the utility operator's failure arises directly from the city's negligence or willful misconduct.
(Ord. 148-2010, passed 12-14-2010)

§ 90.44 COMPLIANCE.

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the city, heretofore or hereafter adopted or established during the entire term of any license granted under this subchapter.
(Ord. 148-2010, passed 12-14-2010)

§ 90.45 CONFIDENTIAL/PROPRIETARY INFORMATION.

If any person is required by this subchapter to provide books, records, maps or information to the city that the person reasonably believes to be confidential or proprietary, the city shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon Public Records Laws, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the city. The city shall not be required to incur any costs to protect such document, other than the city's routine internal procedures for complying with the Oregon Public Records Law.
(Ord. 148-2010, passed 12-14-2010)

§ 90.46 PENALTIES.

(A) Any person found guilty of violating any of the provisions of this subchapter or the license shall be subject to a penalty of not less than $100 nor more than $1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(B) Nothing in this subchapter shall be construed as limiting any judicial or other remedies the city may have at law or in equity, for enforcement of this subchapter.
(Ord. 148-2010, passed 12-14-2010)

§ 90.47 SEVERABILITY AND PREEMPTION.

(A) The provisions of this subchapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

(B) If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this subchapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this subchapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this subchapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the city.
(Ord. 148-2010, passed 12-14-2010)

§ 90.48 APPLICATION TO EXISTING AGREEMENTS.

To the extent that this subchapter is not in conflict with and can be implemented consistent with existing franchise agreements, this subchapter shall apply to all existing franchise agreements granted to utility operators by the city.
(Ord. 148-2010, passed 12-14-2010)

CHAPTER 91: NUISANCES; HEALTH AND SANITATION

Section

GENERAL PROVISIONS

§ 91.01 TITLE.

This chapter shall be known as the "Nuisance Abatement Ordinance," and may be so cited and pleaded.
(Ord. 98, passed 4-4-1996)

§ 91.02 DEFINITIONS.

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

CITY MANAGER. The City Manager or his or her designee.

INOPERABLE VEHICLE.

(1) A vehicle which:

(a) Has been left on private property for more than 30 days;

(b) Has been extensively damaged, including but not limited to a broken window or windshield, missing wheels, tires, motor, or transmission; and

(c) Is more than 3 years old, or is less than 3 years old but has a market value of $200 or less and does not have a valid current vehicle license plate.

(2) For the purposes of this section, a showing that a vehicle, if operated on a public highway of this state, would be in violation of 3 or more of the provisions of O.R.S. 815.100 - 815.325 is evidence that the vehicle is ***INOPERABLE***.

PERSON IN CHARGE OF PROPERTY. An owner, agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.

PERSON RESPONSIBLE. The owner or the person in charge of the property.
(Ord. 98, passed 4-4-1996)

NUISANCES

§ 91.15 NUISANCES AFFECTING PUBLIC HEALTH.

(A) No person shall allow, cause, create, permit, or suffer a nuisance affecting public health on private or public property.

(B) The following are not exclusive but illustrative of nuisances affecting public health and may be abated as provided in this chapter:

(1) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with Department of Environmental Quality regulations;

(2) Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time;

(3) Rotting wastes (garbage) not removed at least every 7 days;

(4) Stagnant water that affords a breeding place for mosquitoes and other insect pests;

(5) Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute the water;

(6) Decayed or unwholesome food offered for human consumption;

(7) An outside toilet, cesspool, septic tank, barn, stable, corral, pen, chicken coop, rabbit hutch, or other premises that are in a state or condition so as to cause an offensive odor or that are in unsanitary condition;

(8) Liquid wastes drained from private premises;

(9) Mastics, oil, grease, antifreeze, or petroleum products allowed to be introduced into the sewer system by a user;

(10) Animal carcasses on streets or private or public property;

(11) Animals or birds afflicted with communicable diseases; and

(12) Animals or birds maintained, kept, or housed in a manner so as to create offensive odors or noise.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.16 NUISANCES AFFECTING PUBLIC SAFETY.

(A) *Prohibited hazards.* No person shall allow, cause, create, permit, or suffer a nuisance affecting public safety on private property. The following are not exclusive but illustrative of nuisances affecting public safety and may be abated as provided in this chapter:

(1) Woodpiles, wood, lumber, rocks, bricks, blocks, or metal within the streets or alleys or upon the sidewalks or planting strips for a period of time longer than 24 hours after placement of that material without first obtaining a permit from the City Manager;

(2) A container with a compartment of more than 1 cubic foot capacity with a door or lid that locks or fastens automatically when closed that cannot be easily opened from the inside, maintained or left in a place accessible to children;

(3) A well, cistern, cesspool, excavation, or other hole of a depth of 4 feet or more and a top width of 12 inches or more uncovered, not fenced, or without a suitable protective construction;

(4) Unguarded machinery, equipment, or other devices appealing, dangerous, and accessible to children;

(5) Lumber, logs, wood, or piling placed or stored in a manner to be appealing, dangerous, and accessible to children; and

(6) Excavations remaining open for an unreasonable amount of time without erecting proper safeguards or barriers.

(B) *Noxious vegetation.* No person shall allow, cause, permit, or suffer noxious vegetation on property or in the right-of-way of a street, alley, or sidewalk abutting the property. Noxious vegetation must be cut down or destroyed as often as needed to prevent the creation of a health, fire, or traffic hazard, or in the case of weeds or other noxious vegetation, from maturing or from going to seed. Noxious vegetation includes:

(1) Vegetation that is or is likely to become:

(a) A health hazard;

(b) A fire hazard;

(c) A traffic hazard, because it impairs the view of a public right-of-way or otherwise makes the use of the thoroughfare hazardous; or

(d) Grass and weeds exceeding 10 inches.

(2) Poison oak;

(3) Poison ivy; and

(4) Blackberry bushes that extend into a public way, a pathway, or cross a property line.

(C) *Unauthorized dumping.*

(1) No person shall deposit, on a public or private property, rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal, or vehicle traveling on a public right-of-way.

(2) No person shall deposit trash, rubbish, debris, or refuse which was generated from a residence or business into public trash receptacles located with the city.

(D) *Trees, bushes, and shrubs.*

(1) No person in charge of property shall allow or permit trees, bushes, or shrubs on property abutting a street, alley, or sidewalk to interfere with vehicular or pedestrian traffic. A person in charge of property shall keep all trees, bushes, or shrubs on the premises, including the adjoining parking strip, trimmed so that any overhanging portions are at least 8 feet above the sidewalk and at least 12 feet above the roadway.

(2) No person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to person or property on or near the property.

(E) *Fences.*

(1) No person shall allow, construct, permit, or maintain a barbed wire fence along a sidewalk or public right-of-way, except that barbed wire may be placed above the top of other fencing not less than 6 feet, 6 inches high.

(2) No person shall allow, construct, permit, maintain, or operate an electric fence along a sidewalk or public right-of-way or along the adjoining property line of another person.

(F) *Surface waters.*

(1) No person shall permit rain water, ice, or snow to fall from a building or structure onto a street or public sidewalk or to flow across the sidewalk.

(2) The person in charge of property shall install and maintain in a proper state of repair, adequate drainpipes or drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk or other property.

(G) *Snow and ice removal.* No person shall suffer, permit, or allow snow or ice which has fallen or accumulated upon a sidewalk to remain upon the sidewalk for more than 6 hours after the snow or ice has ceased to fall thereon; however, if the snow is falling or ice accumulating after the hour of 6:00 p.m., the same shall be removed by 10:00 a.m. on the next succeeding day or within 6 hours after it shall cease to fall. The owner or person in charge of the property abutting upon a sidewalk shall be responsible for removal of snow or ice that may accumulate on that sidewalk.

(H) *Hauling; sifting or leaking loads.*

(1) No person shall drive or move a vehicle on any street unless it is constructed or loaded so as to prevent its contents from dropping, sifting, leaking, or otherwise escaping.

(2) Any person driving a vehicle from which any contents have dropped, sifted, leaked, or escaped must remove the substance or material from the street within 3 hours.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.17 NUISANCES AFFECTING PUBLIC WELFARE.

(A) *Radio and television interference.*

(1) No person shall operate or use an electrical, mechanical, or other device, apparatus, instrument, or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

(2) This division does not apply to devices licensed, approved, and operated under the rules and regulations of the Federal Communication Commission.

(B) *Unreasonable noise.* No person shall allow, cause, create, or permit the continuance of unreasonable noise. The following enumerated noises are not exclusive but illustrative of unreasonable noises:

(1) The keeping of an animal which by loud and frequent or continued noise disturbs the comfort and repose of a person in the vicinity;

(2) The use of an engine, machine, or device which is so loaded, out of repair, or operated in a manner so as to create a loud or unreasonable grating, grinding, rattling, or other noise;

(3) The use of a mechanical device operated by compressed air, steam, or otherwise unless the noise created is muffled;

(4) The construction, including excavation, demolition, alteration, or repair of a building, vehicle, or equipment other than between the hours of 7:00 a.m. and 9:00 p.m. except with a permit issued by the City Manager; and

(5) The use or operation of an electric keyboard or piano, phonograph, loudspeaker, stereo, or sound amplifying device so loudly as to disturb persons at least 5 feet beyond the property on which the sound originates. Sound produced in conjunction with officially organized sporting events, parades, festivals, fairs, and other events issued a permit from the City Council are exempt from the noise limitations.

(C) *Accumulation of debris, junk, and materials.* No person shall allow, cause, permit, or suffer any old or scrap copper, brass, pipe, rope, wire, rags, batteries, paper, plastic, trash, rubber, debris, waste, or inoperable, junked, dismantled, wrecked, scrapped, or ruined appliances, motor vehicles, or other vehicles, or appliance, motor vehicle, or other vehicle parts, iron, steel, or other old or scrap metal or non-metal materials to accumulate on private property within the sight of the public. In the correct zone the person shall not store debris, junk, or other materials on a street, lot, or premises that is not wholly or entirely enclosed except for doors used for ingress and egress.

(D) *Posting bills and advertisements.*

(1) No person shall affix or cause to be distributed any placard, bill, advertisement, or poster upon any real or personal property, public or private, without first securing permission from the owner or person in charge of the property.

(2) Any placard, bill, advertisement, or poster found posted or otherwise affixed upon any public property contrary to the provision of this division (D) may be removed by any employee of the city. The person responsible for the illegal posting shall be liable for the cost incurred in its removal.

(3) This division (D) shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and location of signs and advertising.

(4) This division (D) shall not be construed to prohibit the distribution of advertising material during any parade or approved public gathering.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.18 NUISANCES DECLARED.

The acts, conditions, or objects specifically enumerated and defined in §§ 91.02 and 91.15 - 91.17, inclusive, are declared public nuisances and may be abated by the procedures set forth in this chapter. (Ord. 98, passed 4-4-1996) Penalty, see § 10.99

DANGEROUS AND UNSANITARY BUILDINGS

§ 91.30 DEFINITIONS.

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

DANGEROUS BUILDING.

(1) A structure that, for lack of proper repairs, or because of age and dilapidated condition or of poorly installed electrical wiring or equipment, defective chimney, gas connection, or heating apparatus, or for any other reason, is liable to cause fire, and which is situated or occupied in a manner that endangers other property or human life.

(2) A structure containing combustible or explosive materials or inflammable substances liable to cause fire or danger to the safety of the building, premises or to human life.

(3) A structure that is in a filthy or unsanitary condition liable to cause the spread of contagious or infectious disease.

(4) A structure in such weak, dilapidated or deteriorated condition that it endangers a person or property because of the probability of partial or entire collapse.

PERSON. Every natural person, firm, partnership association or corporation.

§ 91.31 NUISANCE DECLARED.

Every building found by the Council to be a dangerous building is declared to be a public nuisance and may be abated by the procedures specified in this subchapter or by a suit for abatement brought by the city.

§ 91.32 INITIAL ACTION.

When a city official determines that there is a dangerous building, the official shall report it to the Council. The Council shall, within a reasonable time, fix a time and place for a public hearing.

§ 91.33 MAILED NOTICE.

(A) The City Recorder shall notify the owner of the building and, if not the same person, the owner of the property on which the building is situated. The notice shall state:

(1) That a hearing will be held concerning the nuisance character of the property; and

(2) The time and place of the hearing.

(B) A copy of this notice shall be posted on the property.

§ 91.34 PUBLISHED AND POSTED NOTICES.

Ten days' notice of the hearing shall be published in a newspaper of general circulation in the city or by posting notices in 3 public places in the city.

§ 91.35 HEARING.

(A) At the hearing, the owner or other persons interested in the dangerous building shall have a right to be heard.

(B) The Council may inspect the building and may consider facts observed in determining if the building is dangerous.

(C) If the Council determines that the building is dangerous, the Council may by resolution:

(1) Order the building to be abated; or

(2) Order the building to be made safe and prescribe what must be done to make it safe.

§ 91.36 COUNCIL ORDERS; NOTICE.

Five days' notice of the Council's findings and any orders made by the Council shall be given to the owner of the building, the owner's agent or other person controlling it. If the orders are not obeyed and

the building not made safe within the time specified by the order (not less than 5 days), the Council may order the building demolished or made safe at the expense of the property on which it is situated. Penalty, see § 91.99

§ 91.37 ABATEMENT BY THE CITY.

(A) If the Council orders are not complied with, the Council may:

(1) Specify the work to be done;

(2) File a statement with the Recorder; and

(3) Advertise for bids for doing the work in the manner provided for advertising for bids for street improvement work.

(B) Bids shall be received, opened and the contract let.

§ 91.38 ASSESSMENT.

(A) The Council shall determine the probable cost of the work and assess the cost against the property upon which the building is situated. The assessment shall be declared by resolution, and it shall be entered in the docket of city liens and become a lien against the property.

(B) The creation of the lien and the collection and enforcement of the cost shall be performed in substantially the same manner as assessments for street improvements.

§ 91.39 SUMMARY ABATEMENT.

The procedures of this subchapter need not be followed if a building is unmistakably dangerous and imminently endangers human life or property. In this instance, the Chief of the Fire Department, the Fire Marshal or the Chief of Police may summarily demolish the building.

§ 91.40 ERRORS IN PROCEDURE.

Failure to conform to the requirements of this subchapter that does not substantially affect a legal right of a person does not invalidate a proceeding under this subchapter.

ADMINISTRATION AND ENFORCEMENT

§ 91.45 DETERMINATION OF NUISANCES.

Upon receipt of information from any source or upon the City Manager's own knowledge may conduct an appropriate investigation and may determine that a nuisance as defined in this chapter exists.
(Ord. 98, passed 4-4-1996)

§ 91.46 NOTICE TO ABATE.

(A) Upon determination by the City Manager that a nuisance exists, he or she shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate the nuisance.

(B) The City Manager shall cause a copy of the notice posted to be forwarded by registered or certified mail, postage prepaid, to the owner or person in charge of the property at the last known address of the owner or person in charge.

(C) The notice shall contain:

(1) A description of the real property, by street address or otherwise, on which the nuisance exists;

(2) A direction to abate the nuisance within 10 days from the date of the notice;

(3) A description of the nuisance;

(4) A statement that unless the nuisance is removed the city may abate the nuisance and the costs of abatement shall be a lien against the property; and

(5) A statement that the owner or person in charge of the property may protest the abatement by giving notice to the City Manager within 10 days from the date of the notice.

(D) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.

(E) Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file with the City Manager a certificate stating the date and place of the mailing and posting.

(F) An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or other person shall not make the notice void, and in that case the posted notice shall be sufficient.
(Ord. 98, passed 4-4-1996)

§ 91.47 ABATEMENT BY OWNER.

(A) Within 10 days after the posting and mailing of the notice as provided above, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exits.

(B) The owner or person in charge protesting that no nuisance exists shall file with the City Manager a written statement which shall specify the basis for the protest.

(C) The statement shall be referred to the City Council as a part of the Council's regular agenda at the next succeeding meeting, or the Council may call a special meeting to consider the issue. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the Council, and the Council shall thereupon determine whether or not a nuisance exists and this determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement has been filed as provided.

(D) If the Council determines that a nuisance exists, the owner or other person shall within 10 days after the determination abate the nuisance.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.48 ABATEMENT BY CITY.

(A) If within the time allowed the nuisance has not been abated by the owner or person in charge of the property, the City Manager may cause the nuisance to be abated.

(B) The officer charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance.

(C) The City Manager shall keep an accurate record of the expense incurred by the city in abating the nuisance and shall include therein a charge of 20% of the expense for administrative overhead.
(Ord. 98, passed 4-4-1996)

§ 91.49 ASSESSMENT OF COSTS; LIENS.

(A) In the event a nuisance is abated by the city as provided above, the City Manager, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

(1) The total cost of abatement including the administrative overhead;

(2) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice; and

(3) That if the owner or person in charge of the property objects to the cost of the abatement, he or she may file a notice of objection with the City Manager within 10 days from the date of the notice.

(B) Upon expiration of 10 days after the date of the notice, the Council in regular course of business shall hear and determine the objections to the costs to be assessed.

(C) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs as stated or as determined by the Council shall be made by resolution and shall thereupon be entered in the docket of city liens. Upon this entry being made, it shall constitute a lien upon the property from which the nuisance was removed and abated, and the lien shall be enforced in the same manner as liens for city improvements provided in state law.

(D) The lien may be enforced in any manner allowed by law, and shall bear interest at the rate of 1.5% per month. The interest shall commence to run from the date of the entry of the lien in the lien docket.

(E) An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.50 PROCEDURE NOT EXCLUSIVE; EMERGENCY ABATEMENT.

The procedure provided by this chapter is not exclusive but is in addition to any other procedures available by law to the city. An appropriate city official may proceed summarily to abate a nuisance which unmistakably exists and from which there is imminent danger to human life or property.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

§ 91.51 VIOLATION; REMEDIES NOT EXCLUSIVE.

The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.
(Ord. 98, passed 4-4-1996) Penalty, see § 10.99

91.99 PENALTY.

A person who owns or is in possession or in charge of a dangerous building, and who allows the building to remain dangerous for as long as 10 days after receipt of the notice specified in § 91.36, may be fined not more than $_. Each day following the tenth day after receipt of notice that a violation continues shall be considered a separate offense.

CHAPTER 92: ANIMALS

Section

§ 92.01 DEFINITIONS.

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

ANIMAL. Any non-human mammal, fowl, reptile, amphibian, or fish.

AT LARGE. Off or outside the premises belonging to the owner or not in the company of a capable person. The term does not include the use of a dog under the supervision of a person to control or protect livestock or in the other related agricultural activities or the use of a dog by law enforcement personnel.

DANGEROUS ANIMAL. An animal that constitutes a physical threat to human beings or domestic animals or bites any human being or domestic animal. This does not include an animal which bites, attacks, or menaces a trespasser, person, or animal that has tormented or abused the allegedly dangerous animal.

OWNER. Any person, firm, association, or corporation that has a possessory property right in an animal or who harbors, cares for, exercises control over, or knowingly permits an animal to remain on the premises occupied by that person, firm, association, or corporation. This does not apply to a veterinarian or an operator of a commercial kennel, insofar as they may keep dogs in the course of their businesses.

PHYSICAL INJURY. Impairment of physical condition or substantial pain.

SERIOUS PHYSICAL INJURY. Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.
(Ord. 92, passed 7-20-1995)

§ 92.02 DISEASE PREVENTION.

(A) No owner shall permit any animal that is afflicted with a communicable disease to come in contact with another animal or human that is susceptible to the affliction.

(B) No owner shall permit the body of an animal to remain upon public or private property for a period of time longer than 12 hours.

(C) Any owner of an animal shall remove excrement or other solid waste deposited by that animal on public or private property. This includes removing excrement from primary enclosures and areas as often as necessary to prevent contamination, reduce disease hazards, and minimize odors.

(D) No owner shall cause or allow any stable or place where any animal is, or may be kept, to become unclean or unwholesome.
(Ord. 92, passed 7-20-1995) Penalty, see § 10.99

§ 92.03 ENUMERATED NUISANCES.

(A) *Animals at large.* It shall be unlawful for an owner to permit an animal to run at large, except domestic cats. Any such animal is declared to be in violation of this chapter.

(B) *Public nuisances.* It shall be unlawful to keep or maintain within the city any animal which is a nuisance. An animal is a nuisance, as described, if it:

(1) Causes repeated or prolonged disturbances by excessive barking or noise-making plainly audible from inside any neighboring building, vehicle, or residence;

(2) Chases vehicles;

(3) Damages or destroys property of a person other than the owner or custodian of the animal;

(4) Scatters garbage; or

(5) Molests, attacks, or interferes with persons or other domestic animals on property other than the owner's property.
(Ord. 92, passed 7-20-1995) Penalty, see § 10.99

§ 92.04 VIOLATIONS; REMEDIES.

The imposition of a penalty does not relieve a person of the duty to rectify a chapter violation.
(Ord. 92, passed 7-20-1995) Penalty, see § 10.99

CHAPTER 93: TREES

Section

§ 93.01 PURPOSE.

It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other woody plants in the city.
(Ord. 77, passed 7-8-1992)

§ 93.02 DEFINITIONS.

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

PARK TREES. Trees, shrubs, bushes, and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

PUBLIC TREES. Trees, shrubs, bushes and all other woody vegetation within public rights-of-way and public property, including park trees and street trees.

STREET TREES. Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or public rights-of-way within the city.
(Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015)

§ 93.03 PLANNING COMMISSION; DUTIES AS TREE BOARD.

(A) The City Planning Commission shall serve as the designated city authority for all tree related matters within the city, and will serve in lieu of a designated Tree Board as recognized by the State Department of Forestry and the National Arbor Day Foundation.

(B) It shall be the responsibility of the Commission to study, investigate, counsel, and develop or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in other public areas. This plan will be presented annually to the City Council and upon its acceptance and approval shall constitute the official comprehensive city tree plan for the city.

(C) The Commission, when requested by the City Council, shall consider, investigate, make finding, report, and recommend upon any special matter or question coming within the scope of its work.
(Ord. 77, passed 7-8-1992)

§ 93.04 STREET TREE PLANTING.

(A) *Tree species to be planted.* The City Planning Commission will develop and maintain a list of desirable trees for planting along streets in 3 size classes based on mature height: small (under 30 feet), medium (30 - 50 feet), and large (over 50 feet). Lists of trees not suitable for planting will also be created by the Planning Commission.

(B) *Spacing.* The spacing of street trees will be in accordance with the 3 species size classes listed in division (A) of this section, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect or urban forester.

(C) *Distance from curb and sidewalk.* The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the 3 species size classes listed in division (A) of this section, and no trees may be planted in tree lawn widths less than the following: small trees, 3 feet; medium trees, 5 feet; and large trees, 8 feet.

(D) *Distance from street corners and fire hydrants.* No street tree shall be planted within 25 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted within 10 feet of any fire hydrant.

(E) *Utilities.* No street trees other than those species listed as small trees in division (A) of this section may be planted under or within 10 feet of any overhead utility wire.
(Ord. 77, passed 7-8-1992; Am. Ord. 81, passed 12-2-1992; Am. Ord. 159-2015, passed 4-14-2015) Penalty, see § 10.99

§ 93.05 PUBLIC TREE MAINTENANCE CARE.

(A) *Tree Maintenance.* It shall be the responsibility of the property owner adjacent to any street tree to maintain the tree according to the tree maintenance standards detailed in the Municipal Code. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to insure public safety and to preserve or enhance the symmetry and beauty of the public grounds. Any tree, plant or shrub, or part thereof, which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, streets, sidewalks or other public improvements or is affected with any injurious fungus, insect or other pest, may be removed or ordered to be removed by order of the City Planning Commission. Street trees maybe planted by adjacent property owners provided that the selection and location of the trees are in accordance with § 93.04.

(B) *Standards.* All street and public trees must be pruned to National Arborist Association Pruning Standards.

(C) *Pruning; corner clearance.* Every owner of any tree over hanging any street or rights-of-way within the city shall prune the branches so that the branches shall not severely obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 12 feet above the street surface of 8 feet above the sidewalk surface. The owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic-control device or sign or sight triangle at intersections. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of the conductors by the electric utility company in compliance with any applicable franchise agreements. A utility tree trimming policy must be reviewed by the utility company and City Planning Commission prior to any trimming by the utility company. (Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015; Am. Ord. 167-2016, passed 6-14-2016) Penalty, see § 10.99

§ 93.06 TOPPING PROHIBITED; EXCEPTIONS.

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than 3 inches in diameter within the tree's crown to a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the City Planning Commission.
(Ord. 77, passed 7-8-1992) Penalty, see § 10.99

§ 93.07 TREE REMOVAL ON PRIVATE PROPERTY.

The city shall have the right to cause the removal of any dead or diseased trees or trees or parts of trees and shrubs within the city which damage or threaten to damage public improvements, constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. Such threats and conditions are deemed to constitute a public nuisance. Where a public nuisance under this Section is determined to exist, the City Planning Commission shall direct the City Manager to abate the nuisance in accordance with the administration and enforcement proceedings set forth in §§ 91.46 through 91.51.
(Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015; Am. Ord. 167-2016, passed 6-14-2016) Penalty, see § 10.99

§ 93.08 INTERFERENCE WITH PLANNING COMMISSION UNLAWFUL.

It shall be unlawful for any person to obstruct or interfere with the City Planning Commission, or in connection with any of the requirements of this chapter.
(Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015) Penalty, see § 10.99

§ 93.09 DISTURBING STREET OR PARK TREE; PERMIT REQUIRED.

No person shall plant, prune, remove, fertilize, or excavate within 10 feet of a street or park tree without first obtaining a city permit.
(Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015) Penalty, see § 10.99

§ 93.10 TREE PRUNING; LICENSE AND BOND REQUIRED.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street, park, or private trees within the city without first applying for and procuring a business license. No license shall be required of any public service company including electric utilities and their agents and contractors or city employees doing that work in the pursuit of their public service endeavors. Before any business license shall be issued, each applicant shall first file evidence of possession of liability and property damage insurance indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as herein described in accordance with business license requirements.
(Ord. 77, passed 7-8-1992; Am. Ord, 159-2015, passed 4-14-2015) Penalty, see § 10.99

§ 93.11 REVIEW BY CITY COUNCIL.

The City Council shall have the right to review the conduct, acts, and decisions of the City Planning Commission. Any person may appeal from any ruling or order of the City Planning Commission to the City Council who may hear the matter and make final decisions.
(Ord. 77, passed 7-8-1992)

§ 93.12 VIOLATIONS; TREE REPAIR OR REPLACEMENT.

If the violation of any provision of this chapter results in injury, mutilation, or death of a street or park tree, the cost of repair or replacement shall be borne by the party in violation. The replacement value of street or park trees shall be determined in accordance with the method prescribed by the Council of Tree and Landscape Appraisers, and as revised.
(Ord. 77, passed 7-8-1992; Am. Ord. 159-2015, passed 4-14-2015) Penalty, see § 10.99

CHAPTER 94: ABANDONED VEHICLES

Section

§ 94.01 GROUNDS TO TOW VEHICLE.

A vehicle may be towed and held at the expense of the owner or person entitled to possession thereof from:

(A) Any public right-of-way, public park, or other public place, when:

(1) The vehicle is parked in violation of a temporary or permanent parking restriction;

(2) The vehicle is parked unlawfully or in a manner that may be hazardous to traffic;

(3) The vehicle is parked on city owned or operated property without express city permission;

(4) The vehicle was used in committing a traffic or parking violation for which an unserved warrant or parking citation is on file with the clerk of any court;

(5) The vehicle has been reported stolen;

(6) The vehicle or its contents are to be used as evidence in traffic or criminal prosecutions;

(7) The vehicle is in possession of a person taken into custody by a law enforcement agency;

(8) The vehicle is parked in a space that is marked as reserved for disabled persons, unless the vehicle conspicuously displays appropriate decals, insignia, or registration plates as required by state statutes; or

(9) A police officer reasonably believes that the vehicle's operator is driving without liability insurance.

(B) Private property, if:

(1) The vehicle is parked or stopped without the permission of the person in control of that property; or

(2) The vehicle is parked or stopped in violation of this title or in violation of state law. (Ord. 96, passed 1-5-1996) Penalty, see § 10.99

§ 94.02 TOWING WITHOUT PRIOR NOTICE.

Any authorized officer may, without prior notice, order a vehicle towed, when:

(A) The vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic;

(B) The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or at any time and place the vehicle is interfering or reasonably likely to interfere with the intended use of such a space, zone, or traffic lane;

(C) The vehicle poses an immediate danger to the public safety;

(D) The vehicle is illegally parked within 10 feet of a fire hydrant;

(E) A police officer reasonably believes that the vehicle is stolen;

(F) A police officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if towing is reasonably necessary to obtain or preserve the evidence;

(G) The vehicle was in possession of a person taken into custody by a law enforcement officer and no other reasonable disposition of the vehicle is available;

(H) The vehicle is in the possession of a person arrested for any felony traffic offense, as defined by Oregon Revised Statutes; or

(I) A police officer reasonably believes that the vehicle's operator is driving uninsured.
(Ord. 96, passed 1-5-1996) Penalty, see § 10.99

§ 94.03 TOWING REQUIRING PRIOR NOTICE.

(A) Except as provided in § 94.02, vehicles may be towed only after notice has been provided as required in this chapter.

(B) Vehicles subject to tow under this section may not be towed prior to a hearing, if one has been requested, pursuant to § 94.09 of this code.
(Ord. 96, passed 1-5-1996)

§ 94.04 TOWING UPON COURT ORDER.

Vehicles that have been used in the commission of a traffic or parking violation, for which an unserved warrant or citation is on file with the clerk of any court, may be towed upon order of the court.
(Ord. 96, passed 1-5-1996) Penalty, see § 10.99

§ 94.05 NOTICE OF TOWING.

(A) When notice is required before towing a vehicle, notice shall be provided by:

(1) Affixing a tow warning to the vehicle at least 10 days prior to the tow; and

(2) Mailing a notice to the registered owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle within 48 hours, Saturdays, Sundays, and holidays excluded, after the tow warning is affixed to the vehicle.

(B) The tow warning and the mailed notice will state:

(1) The vehicle is parked in violation of city code or state law;

(2) The city intends to tow and remove the vehicle if the violation is not corrected; and

(3) A hearing is available to contest the validity of the intended tow, and shall state the method of requesting a hearing, including the date by which a hearing may be requested.

(C) If a timely request for hearing is received pursuant to § 94.09 herein, the vehicle will not be towed until the tow hearings officer makes a determination.
(Ord. 96, passed 1-5-1996)

§ 94.06 NOTICE AFTER TOWING; EXCEPTIONS.

(A) After a vehicle has been towed pursuant to this chapter, notice will be provided to the registered owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle. Notice will be mailed to that person within 48 hours after the tow of the vehicle, Saturdays, Sundays, and holidays excluded, and will state:

(1) That the vehicle has been towed;

(2) The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;

(3) The address and telephone number of the person or facility that may be contacted for information on the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;

(4) That the vehicle and its contents are subject to a lien for the towing and storage charges; that if the vehicle is not claimed within 30 days after the mailing date of the notice, the vehicle and its contents will be subject to sale by the city or the towing and storage facility where the vehicle is located; and that failure to reclaim the vehicle within that time will constitute a waiver of all interest in the vehicle; and

(5) Unless notice of the availability of a hearing to contest the tow has been provided prior to towing as prescribed in § 94.05(A), the notice will state that a hearing may be requested to contest the validity of the tow and will set forth the time in which a hearing must be requested and the method of requesting a hearing.

(B) If a vehicle has been reclaimed prior to the mailing of the notice, no notice need be mailed or provided, but the person or persons reclaiming the vehicle must be provided with written notice of the opportunity for a hearing to contest the tow as provided in § 94.09 of this code.

(C) In those circumstances in which it can reasonably be anticipated that mailing of notice may hinder or prevent the apprehension of a suspect in an ongoing criminal investigation, the mailing of the notice may be delayed until a time as will not prejudice that investigation or apprehension.
(Ord. 96, passed 1-5-1996)

§ 94.07 UNIDENTIFIABLE VEHICLE OWNERSHIP.

No notice need be mailed when:

(A) A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined; or

(B) When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and other persons with an interest in the vehicle cannot otherwise be reasonably determined.
(Ord. 96, passed 1-5-1996)

§ 94.08 NOTICE OF OPPORTUNITY TO CONTEST TOW.

Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which has been towed pursuant to this chapter. This information will be made available by the tow company or other facility holding the vehicle.
(Ord. 96, passed 1-5-1996)

§ 94.09 REQUEST FOR HEARING.

(A) After a vehicle has been towed pursuant to § 94.02 of this code, and prior to towing pursuant to § 94.03 of this code, the owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle are, upon timely application filed with the tow hearings officer, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

(1) In the case of a vehicle towed pursuant to § 94.02, the application must be filed with and received by the tow hearings officer not later than 10 days after the vehicle was towed.

(2) In the case of a vehicle proposed to be towed pursuant to § 94.03, the application must be filed with and received by the tow hearings officer not later than 10 days after the affixing of the tow warning to the vehicle.

(B) The tow hearings officer may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired. If the mailing of the towed vehicle notice was delayed, the tow hearings officer will grant a request for hearing received and filed within 10 days of the mailing date of the notice or 10 days of the date of the vehicle was reclaimed, whichever occurs first.

(C) The request for hearing must be in writing and will state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid or for any other reason unjustified. The request for hearing will also contain other information, relating to the purposes of this chapter, as the tow hearings officer may require.

(D) The tow hearings officer will set and conduct an administrative hearing on the matter within 14 days of receipt of the proper request filed pursuant to this section. In all cases where a vehicle has been towed and not yet released, however, the tow hearings officer will set and conduct the hearing within 72 hours, not including Saturdays, Sundays, or holidays, on receipt of the request.
(Ord. 96, passed 1-5-1996)

§ 94.10 HEARING PROCEDURE.

(A) The hearing shall afford a reasonable opportunity for the person(s) requesting it to demonstrate by the statements of witnesses and other evidence, that the tow and storage of the vehicle was or would be invalid or for any other reason not justified.

(B) The tow hearings officer will make necessary rules and regulations regarding the conduct of these hearings, consistent with this section.
(Ord. 96, passed 1-5-1996)

§ 94.11 FINDINGS AND ACTION.

(A) *When tow found invalid.* If the tow hearings officer finds the tow or storage was or would be invalid or not justified, the tow hearings officer will order the vehicle:

(1) Be immediately released if already towed. The owner(s) or any other person(s) who have an interest in the vehicle are not liable for the tow or storage charges and any money paid for tow or storage charges will be returned, as appropriate; or

(2) Not be towed if the vehicle is about to be towed.

(B) *When tow found valid.*

(1) If the tow hearings officer finds the towing and storage were or would be valid, the tow hearings officer will order the vehicle, if still held, to be held until all tow and storage charges are paid. If the vehicle is about to be towed, pursuant to § 94.03, the tow hearings officer will order the vehicle to be towed and impounded if the violation involving that vehicle has not been completely corrected.

(2) The city shall be responsible in all cases in which a hearing has been requested and held, and the tow and storage found to be valid, for those storage charges that have accrued from the date the hearing was requested through the first available hearing date.
(Ord. 96, passed 1-5-1996)

§ 94.12 HEARING ADMINISTRATION.

(A) The decision of the tow hearings officer is final.

(B) Any person who has a hearing scheduled pursuant to this section and fails to appear at the hearing without good cause shown, as determined by the tow hearings officer, will not be entitled to have that hearing rescheduled.

(C) The owner(s) and any other person(s) who have an interest in the vehicle are only entitled to 1 hearing for each tow of that vehicle.

(D) Owners of vehicles towed by court order are not entitled to a hearing pursuant to this chapter.
(Ord. 96, passed 1-5-1996)

§ 94.13 TOWING AND STORAGE CHARGES; RELEASE OF VEHICLE.

(A) *Charges and release of vehicle.*

(1) Any private company that tows and stores any vehicle pursuant to this chapter shall have a lien on the vehicle, in accordance with O.R.S. 87.152, for the just and reasonable charges for the tow and storage services performed. The company may retain possession of that vehicle, consistent with this chapter, until towing and storage charges have been paid. Provided, however, the city shall pay all storage charges that accrue as a result of the hearings process.

(2) If the required towing and storage charges have been paid, the vehicle must be immediately released to the person(s) entitled to lawful possession. However, if a vehicle is towed pursuant to this chapter for the operator's failure to have liability insurance, the person reclaiming the vehicle shall also provide proof of liability insurance before the vehicle can be released. If towing and storage charges have not been paid, a vehicle will not be released, except upon order of the tow hearings officer.

(3) A vehicle towed pursuant to this chapter may only be released to the owner, or to the person who was lawfully in possession or control of the vehicle at the time it was towed, or to a person who purchased the vehicle from the owner and who produces written proof of ownership. In all cases, adequate evidence of the right to possession of the vehicle must be presented prior to release of the vehicle.

(B) *When tow found invalid.*

(1) The accrued towing and storage charges assessed under this chapter will be waived by the hearings officer if the tow is found to be invalid or for any other reason not justified, after a hearing has been held.

(2) A person's inability to pay the towing and storage charges, in and of itself, is not a sufficient basis for the waiving of these charges.

(3) If the charges are owed to a private company, the city will pay them if, after a hearing, the tow is found to be invalid or for any other reason not justified and the charges have not previously been paid.

(C) *When tow found valid.* If the hearings officer finds the towing and storage were valid, the person entitled to possession of the vehicle will be responsible for all towing and storage charges except as provided for in § 94.11(B)(2) of this code.
(Ord. 96, passed 1-5-1996)

§ 94.14 STORAGE CHARGES AFTER HEARING COMPLETION.

After the tow hearings officer makes a public determination on a vehicle tow hearing, the vehicle must be picked up by the person entitled to possession within 24 hours to avoid other storage charges. If the vehicle is not claimed within this time period, it will not be released until the additionally accrued storage charges, if any, are paid.
(Ord. 96, passed 1-5-1996)

§ 94.15 UNCLAIMED VEHICLES; DISPOSITION.

(A) *When a vehicle may be sold.* Any vehicle that is not reclaimed within 30 days of the date notice is sent under § 94.06 (notice after towing) may be sold. A vehicle is not reclaimed, as meant herein, until the owner or other person entitled to possession of the vehicle has fully paid all required fees and charges and provided other documentation as is required under this chapter.

(B) *Sale of vehicles.*

(1) As often as necessary, the City Recorder will be provided with a list of all unclaimed vehicles which have been towed and stored by or for the city which have been in storage 30 days or longer.

(2) The City Recorder will, as soon as convenient, sell those vehicles at public auction to the highest bidder for cash. Notice of this auction shall be published once in a newspaper of general circulation in the city at least 10 days before the date of the sale, giving the time and place of the sale and generally describing the vehicles to be sold.

(3) When vehicles are sold as set forth herein, a certificate of sale will be issued by the city to the purchaser.

(4) The proceeds of the sale will be first applied to payment of the cost of the sale and expense incurred in the preservation and custody of the vehicles, and the balance, if any, will be credited to the general fund of the city.
(Ord. 96, passed 1-5-1996)

CHAPTER 95: PARKS AND RECREATION

Section

Cross-reference:

Offenses Concerning Alcoholic Beverages, see §§ 131.35 et seq.
Skateboards and Other Roller Devices, see §§ 71.45 et seq.

GENERAL PROVISIONS

§ 95.01 HOURS OF PARK OPERATION.

(A) City parks shall be open and available for public use from 7:00 a.m. until dusk every day, 365 days per year, unless closed by the city.

(B) It shall be unlawful for a person or persons other than city staff, city agents, or emergency personnel to be in the city park at any time from dusk until 7:00 a.m.
(Ord. 123-01, passed 10-9-2001) Penalty, see § 10.99

CAMPING AT CERTAIN PUBLIC PROPERTIES

§ 95.15 DEFINITIONS.

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

CAMP. To occupy a campsite for over 24 hours.

CAMPING MATERIALS. Include, but are not limited to, vehicles used as a temporary or permanent residence, tents, huts, awnings, lean-tos, chairs, tarps, collections of personal property, and/or similar items that are, or reasonably appear to be, arranged and/or used as camping accommodations.

CAMPSITE. A location upon city property where camping materials are placed or vehicles are parked.

CITY PROPERTY. Includes, but is not limited to, parks, rights-of-way, parking lots, easements, or other land owned, leased, controlled, or managed by the city.

PERSONAL PROPERTY. Any item that can reasonably be identified as belonging to an individual and that has apparent value or utility.

RELOCATE. To move off city property or to a different city property. This definition does not include moving to another portion of the same city property.
(Ord. 182-2023, passed 5-16-2023)

§ 95.16 CAMPING PROHIBITED ON CITY PROPERTY.

(A) It is unlawful for any person to camp upon city property unless otherwise authorized by law or by declaration of the City Manager.

(B) Unless otherwise authorized by law or by declaration of the City Manager, it is unlawful to establish a campsite for any period of time at the following locations:

(1) City Hall and adjacent sidewalks, 10710 Main Street NE;

(2) Water treatment plant and adjacent sidewalks and greenspaces, 10983 Rees Street NE;

(3) Sewer treatment plant and adjacent parking lot and greenspace, 10501 Donald Road;

(4) Fire station and adjacent sidewalk and greenspaces, 20909 Feller Street NE;

(5) Skate park and basketball courts, 10861 Main Street NE;

(6) Hometown Park, 10730 Main Street NE;

(7) (Former) DCC property, 10790 Main Street NE;

(8) The city-owned property consisting of 280 feet by 245 feet of area located in Marion County on Donald Road leased to G.K. Machine, Inc.;

(9) Within 500 feet of any residence; and

(10) Any loading zone at any time, or any designated parking space for which a time limit is prescribed.

(C) Where camping is permitted, it is unlawful for any person to camp after 8:00 a.m. or prior to 8:00 p.m.

(D) At least once every 24 hours, an individual that has placed a campsite, camping materials, or personal property on city property must relocate.

(E) The city shall only remove individuals and unclaimed personal property from a campsite as provided by O.R.S. 195.505.

(F) Any camping inside or adjacent to a vehicle shall be subject to the provisions of Chapters 71, 72 and 94 of this code. A vehicle used for camping must relocate to a lawful campsite that is at least 1,000 yards from its previous location.

(G) Violation of this section is punishable by a fine of not more than $125, or an amount determined at the discretion of the Municipal Judge.

(H) If the city refers a service provider to an individual who is cited for a violation of this section and the individual demonstrates they meaningfully engaged with that or another similar service provider after receiving the citation and before the hearing, the fine is eligible to be reduced or eliminated at the discretion of the Judge.
(Ord. 182-2023, passed 5-16-2023) Penalty, see § 10.99