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CHAPTER 2
LOCAL IMPROVEMENTS

SIDEWALKS

Maintenance Procedures for Sidewalks

2.000 **Duty to Repair Sidewalks and Other Improvements**. An owner of real property shall keep the sidewalk, curb, driveway, handrail, retaining wall and sidewalk door adjacent to or abutting on such real property in a good state of repair to eliminate the hazard of injuries to pedestrians.

2.005 **Liability for Sidewalk Injuries**. An owner of real property is liable for damages to a person injured upon the sidewalk adjacent to or abutting his real property because of the owner's fault or negligence in failing to put or keep the sidewalk in a good state of repair. *[Section 2.005 amended by Ordinance No. 88-18, passed October 3, 1988.]*

2.010 **Report of Defective Improvements**. Whenever any improvement specified in Section 2.000 of this code is discovered or reported to be defective, the city manager shall report to the city council the description of the adjacent or abutting real property, the owner thereof and the type of repair needed.

2.015 **Notice of Defect to Abutting Owner**. Upon receipt of such report the city council may declare the defective improvement a nuisance and, if done, shall notify and direct the owner to repair a defective improvement, and if so directed, the city manager shall notify the owner affected by such city council action by certified mail, return receipt requested, and by posted notice upon the property. The notice shall state that the defective improvement specifically listed therein shall be repaired completely according to city specifications within 30 days after notice is mailed and posted and that, if the owner does not comply with the notice, the city will repair the defective improvement and charge the costs thereof against the adjacent or abutting property as a lien.

2.020 **City Repair of Defective Improvements: Abatement Procedures**.

(1) If the owner does not complete such repair within the time allowed the city manager upon direction by the city council shall have the repair made.

(2) The procedures provided in Sections 5.450 and 5.455 of this code shall be followed in abatement of a nuisance prohibited under Section 2.015 of this code.

DRIVEWAYS AND CULVERTS

Driveway Regulations

2.050 **Definitions**. In Sections 2.050 to 2.100 of this code the following words and phrases mean:

(a) Driveway. That portion of the street providing access to private property from the edge of the roadway or traveled portion of the street to the property line. The word includes any facility constructed on private property for the purpose of providing motor vehicle access to a public street from the property.

(b) Culvert. The drainage pipe under the driveway of an unpaved street, or a drainage pipe within and along the roadway of an unpaved street.

(c) Paved street. A public street in which the roadway has been improved as a part of the public street and alley system of the city by the construction of concrete or asphaltic surface to the width required, and other specifications imposed by the city, with curbs, gutters and aprons on both sides of the street.

(d) Unpaved street. Any street within the city other than a paved street.

2.055 **Permit Required, Driveway Across Sidewalk**. No person may construct or maintain a driveway across a public sidewalk, parkway or street without first obtaining a permit, nor construct or maintain a driveway for which a permit is required contrary to the provisions of Sections 2.050 to 2.090 of this code.

2.060 **Application for Permit to City Engineer**. The city engineer shall receive an application for a permit required in Section 2.055 of this code. The application shall state the location, grade and dimensions of the proposed driveway and the purpose for which it is desired, together with a sketch, showing the full frontage of the property, existing driveways, requested driveways and the location of the nearest driveway on either side of the property.

2.065 Issuance of Permit.

(1) Upon receipt of an application for a permit to construct or maintain a driveway in accordance with this code and upon payment to the city engineer of a $5.00 permit fee, if the city engineer finds that the proposed driveway will not be an unreasonable hazard to the people of the city, he shall issue a permit therefor.

(2) If the city engineer refuses to issue the driveway permit, the applicant may appeal to the city council within 30 days after the refusal. The appeal procedure specified in Section 1,070 of this code shall be followed.

2.070 Revocation of Permit.

(1) A permit for construction and maintenance of a driveway may be revoked by the city manager if:

(a) The driveway is not maintained in a safe condition;

(b) The city manager finds the maintenance of the driveway is an unreasonable hazard to the public safety or detrimental to the public welfare; or

(c) The driveway is constructed contrary to the provisions of Sections 2.075 to 2.080 of this code.

(2) A driveway for which a permit is revoked may be abated as a nuisance as provided in Sections 2.000 to 2.020 of this code.

2.075 Construction Specifications. A driveway and sidewalk area used as a part thereof shall be designed and constructed in accordance with plans and specifications on file in the office of the city engineer. Such designs, plans and specifications are by reference incorporated in and made a part of this code.

2.080 Placement and Width of Driveway.

(1) If only one driveway is desired, the maximum width of the driveway at the edge of the roadway or curbline is as follows:

Frontage of Property Desiring Driveway	Width of Driveway
Less than 50 feet	20 feet
50 to 75 feet	25 feet
More than 75 feet	30 feet

(2) If more than one driveway is desired for frontage up to 100 feet, the maximum width permitted for each driveway is 20 feet and not more than two driveways are permitted. Not less than 22 feet of continuous curb shall separate driveways under one ownership or when practicable when under separate ownerships.

(3) For frontage in excess of 100 feet, each additional 100 feet or fraction thereof is considered as separate frontage.

(4) When a driveway is constructed on a corner lot, it shall not be built closer than two feet from the crosswalk at the curbline.

(5) Driveways in excess of the maximum widths shall be approved by the city council.

2.085 **Paved Driveway on Unpaved Street**. Subject to the provisions of Section 2.090 of this code, a paved driveway constructed on private property to give access to the property from an unpaved street shall conform to the proposed sidewalk grade along the street as established by the city.

2.090 **Notice of Proposed Sidewalk Grade**. At the time of issuing a building permit required by the building regulations of this code, the official issuing the permit shall indicate thereon, or on the plans submitted therefor, the proposed sidewalk grade on an unpaved street abutting the premises for which the permit is issued. The city engineer, upon the request of a person owning or planning to construct a paved driveway on property abutting an unpaved street, shall advise the person in writing of the grade of the proposed sidewalk where it abuts the street property. If at the time the building permit is requested no sidewalk grade is established, the city shall establish the grade within 30 days thereafter. If the grade is not established within this period, then the person may construct the driveway without regard to the sidewalk grade. The city is not obligated to establish a sidewalk grade to conform to such driveway.

2.095 **Laying of Culverts**. The right to lay a culvert within the street is reserved expressly to the city. A person desiring the installation of a culvert within a street under a driveway or along property frontage shall apply to the city requesting the city to install the same, stating the length, location and purpose of the culvert. The applicant shall deposit the culvert installation fee, to be computed under Section 2.100 of this code, with the finance director to cover the cost of construction. The authorized official of the public works department shall execute a work order specifying the length, width, location and position of the culvert and containing the other specifications necessary for the construction of a culvert adequate to convey the surface water, with due regard to the preservation of the street and the protection of property abutting the street in the near vicinity, The city shall proceed to construct the culvert pursuant to the work order.

2.100 **Charges for Culvert Installation**. The culvert installation fee includes the costs of culvert pipe, rock over the pipe, backfill, engineering and labor incurred by the city in the installation.

SPECIAL ASSESSMENT PROCEDURES

Special Assessments for Public Improvements

2.125 **Definitions**. In Sections 2.125 to 2.220 of this code the following words and phrases mean:

(a) Improvement. Acquiring, altering, changing the grade of, constructing, establishing, extending, installing, laying, laying out, opening, reconstructing, repairing, or widening any street, alley, avenue, sewer, drain, water main, sidewalk, curb, gutter, off-street motor vehicle parking facility; or performing any other public work for which an assessment may be made on the property benefitted.

(b) Property benefitted. All property specifically benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the total cost of the improvement among the properties determined to be specially benefitted therefrom.

2.130 **Preparation of Plans and Specifications**. Whenever the city council determines, either after petition by property owners or on its own motion, to make any improvement to be paid for in whole or in part by special assessment on the property benefitted, the city council, by motion, shall

direct the city manager to have a written report prepared. Unless the city council directs otherwise, the report shall contain the following matters:

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

(b) Plans, specifications and estimates of the work to be done. Where the improvement is to be carried out in cooperation with any other governmental agency, the city engineer may adopt the plans, specifications and estimates of such agency.

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

(d) An estimate of the unit cost of the improvement to the property benefitted.

(e) A recommendation of the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the property benefitted.

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

(g) A statement of outstanding assessments against property to be assessed.

(h) A list of all easements necessary and estimates of costs to obtain them.

A copy of the completed report shall be filed in the office of the finance director.

(i) A proposed rate of interest to be charged on assessments not paid within 30 days of the date of the assessment ordinance. The rate of interest proposed shall take into account the cost of obtaining financing for the improvement. *[Subsection (9) added by Ordinance No. 88-06, section 1, passed April 18, 1988.]*

2.135 **City Council Action on Report**. After the report has been filed, the city council, by motion, may approve the report, modify and approve the report,

require additional information about the improvement, or abandon the improvement.

2.140 **Resolution of Intent to Create Improvement District**. After approving the report the city council, by resolution, shall declare its intention to make the improvement, provide the manner and method of carrying out the improvement and direct that the finance director:

(a) Give notice of the improvement by two publications one week apart in a newspaper of general circulation in the city.

(b) Mail a copy of the notice of the improvement to each owner to be assessed for the costs of the improvement. *[Section 2.140 amended by Section 1 of Ordinance No. 73-05, passed May 7, 1973.]*

2.145 **Manner of Doing Work**. The city council may provide in the improvement resolution that the construction work may be done in whole or in part by the city, by a contract, by any other governmental agency, or by any combination of methods.

2.150 **Content of Notice of Public Hearing**. The published notice of the improvement shall contain the following information:

(a) The report is on file in the office of the finance director and subject to public examination.

(b) The city council will hold a public hearing on the improvement on a specified date, which shall not be earlier than 10 days following the first publication of notice, at which objections and remonstrances to the improvement will be heard.

(c) A description of the property benefitted by the improvement.

(d) The estimate of the unit cost of the improvement to the property benefitted.

(e) The estimate of the total cost of the improvement to be paid for by special assessments to property benefitted.

(f) The rate of interest to be charged on assessments not paid within 30 days of the date of the assessment ordinance. *[Subsection (f) added by Ordinance No. 88-06, section 2, passed April 18, 1988.]*

2.155 **Public Hearing**. After hearing the written remonstrances and oral objections of the owners to be benefitted by the improvement, the city council, by motion, at the time of the public hearing or within 60 days thereafter may order the improvement to be carried out in accordance with the improvement resolution, of the city council, by motion, may abandon the improvement.

2.160 **Call for Bids**.

(1) If any part of the work of the improvement is to be done under contract bids then the city council shall determine the time and manner of advertisement for bids. The city council may direct the city manager to advertise for bids for construction of all or any part of the improvement on the basis of the report approved by the city council and before the passage of the improvement resolution, or after the passage of the improvement resolution and before the public hearing on the improvement, or at any time after the public hearing.

(2) No contract may be let until after the public hearing held by the council to consider written remonstrances and oral objections to the improvement, Any contracts for the improvement shall be let to the lowest responsible bidder. The city council may reject any or all bids when they are deemed unreasonable or unsatisfactory.

(3) The city council shall provide for bonding all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city.

(4) If the city council finds, upon opening bids for the improvement, that the lowest responsible bid is 10 percent or more in excess of the estimate, it may, in its discretion, set a time for hearing objections to proceeding with the improvement on the basis of such bid, and it may direct the finance director to publish one notice of the hearing in a newspaper of general circulation in the city. *[Subsection (4) as amended by Section 2 of Ordinance No. 73-05, passed May 7, 1973.]*

(5) After the public hearing the city council, by motion, at the time of the public hearing or within 30 days thereafter, may accept the bid, order the improvement to be carried out in accordance with the improvement resolution, or the city council, by motion, may abandon the improvement.

2.165 **Assessment Ordinance**. After the public hearing on the improvement and after the city council has moved to proceed with the improvement it may adopt an ordinance assessing the various lots, parcels of land, or portions thereof, to be specially benefitted with their apportioned share of the cost of the improvement. Adoption of the assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and its total cost determined.

2.170 **Method of Assessment and Alternative Methods of Financing**.

(1) The city council, in adopting a method of assessment of the costs of the improvement, may:

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

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

(c) Authorize payment by the city of all or any part of the cost of the improvement when in the opinion of the city council the topographical or physical conditions, unusual or excessive public travel, or other character of the work involved warrant only a partial payment or no payment of the costs of the improvement by the property benefitted. The proportion to be paid by the city shall represent a reasonable relation between the benefits derived by the property specially assessed and the benefits derived by the city as a whole.

(2) Nothing in this code precludes the city council from using other available means of financing improvements, including federal or state grants-in-aid, sewer, water or other utility charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. If other means of financing improvements are used, the city council, in its discretion, may levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

2.175 **Notice of Assessment**. Within 30 days after the adoption of the assessment ordinance, the finance director shall mail a notice of the assessment to the owner of the assessed property and shall publish notice of the assessment twice in a newspaper of general circulation in the city, the first publication to be made not later than 20 days after the date of the assessment ordinance. The notice of assessment shall recite the date of the assessment ordinance and state that upon failure of the owner of the property assessed

to make written application within 30 days from the date of the assessment ordinance to pay the assessment in installments, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, interest will commence to run on the assessment and the property assessed will be subject to foreclosure. The notice shall set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment. *[Section 2.175 amended by Section 3 of Ordinance No. 73-05, passed May 7, 1973.]*

2.180 Installment Payments.

(1) The owner of property assessed for an improvement in the sum of $25.00 or more, within 30 days from the date of the assessment ordinance, may make written application to the finance director to pay the assessment in installments. The finance director may approve such installment payments provided:

(a) The amount remaining unpaid upon such assessment together with any unpaid balance of any previous assessments for improvements against the same property does not exceed double the assessed valuation of the property, as shown by the last county tax roll; and

(b) The time limit for installment payments does not exceed 20 years. *[Section 2.180 amended by Section 3 of Ordinance No. 73-05, passed May 7, 1973.]*

2.185 Lien Records and Foreclosure Proceedings.

(1) After adoption of the assessment ordinance, the finance director shall enter in the lien docket a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, a description of the improvement, the names of the owners and the date of the assessment ordinance. The amount entered in the lien docket becomes a lien and charge upon the particular lot, parcel of land, or portion thereof assessed for the improvement. Interest shall be charged on the unpaid balance until paid, on all amounts not paid within 30 days from the date of the assessment ordinance. The rate of interest shall be that which was approved on the report. All unpaid assessments and interest are a lien on each lot, parcel of land, or portion thereof, in favor of the city, and such liens have priority over all other liens and encumbrances whatsoever. *[Subsection (1) amended by Ordinance No. 88-06, section 3, passed April 18, 1988.]*

(2) The lien shall be considered delinquent if not paid or placed on an installment basis within 30 days after the date of the assessment ordinance. If the owner neglects or refuses to pay an installment when it becomes due or payable, for a period of one year, the city council may adopt a resolution giving the name of the owner then in default in payment of the sums due, either principal or interest, together with a description of the property upon which the sums are owed; and the city council may declare the whole sum, both principal and interest, due and payable at once.

(3) If the sum assessed upon any land is not wholly paid within 30 days after the date of the assessment ordinance, or bonded within a time prescribed if bonding is permitted, the finance director shall proceed in a manner provided by law for the sale of real property on execution, except as otherwise provided herein. Each parcel of land shall be sold separately and for a sum payable to the city equal to, but not exceeding, the unpaid assessment, interest, penalty, if any, and costs, which shall be the cost of advertising, sale and indirect costs related to notification and identification. Where there is more than one bid, the land shall be sold to the bidder offering first the lowest penalty, and next the lowest interest to be paid on redemption. Penalty shall not exceed 10 percent of the amount paid to the city on a sale, and interest shall not exceed 10 percent per annum from the date of the sale to the date of redemption. A sale of land hereunder conveys to the purchaser subject to redemption all the estate, interest, liens or claims of all persons, together with all rights and appurtenances belonging to it. No levy upon a land shall be required, except that a notice shall be posted at least four weeks before sale upon every parcel assessed to an unknown owner. A delinquent assessment, with interest and costs incurred to that date, may be paid at any time prior to the sale. In case of sale, payment must be made in lawful money of the United States.

Whenever the market valuation for tax purposes of land assessed and subject to sale for collection of unpaid assessments exceeds the sum payable to the city of the unpaid assessment, interest and estimated costs plus the total of any past due taxes by 25 percent or more of the city and tax liens, the treasurer may, subject to general guidelines of the city council, withhold or withdraw such property from public sale and in lieu thereof, may sell the property by private sale to the city upon payment by the city from the general fund of the unpaid assessment, interest and costs. If land is not valued for tax purposes, the market value estimated by the city shall be considered the market valuation for tax purposes under this section.

Immediately after a sale of land for delinquent assessment, the finance director shall make and deliver to the purchaser a certificate of sale describing the property sold, the amount of sale, the name of the purchaser and stating that the sale is made subject to redemption within the period fixed by ordinance, and any other information he finds appropriate. The certificate of sale shall also show the rate of penalty and interest bid and for which the sale was made in addition to the principal sum of sale payable to the city. If the property has been sold to the city, the certificate of sale shall show 10 percent penalty and interest at 10 percent per annum on the amount of the sale to the date of redemption. The city, at its option, may enter a bid for the property being offered at a foreclosure sale.

After a sale of land for delinquent assessment, the finance director shall notify by registered mail, or its equivalent, the owner of the land prior to the sale, if known, that the property has been sold and the name of the purchaser thereof.

The finance director shall make proper entries in the lien docket to record the sales and collection of delinquencies. Thereafter, no transfer or assignment of any certificate of sale hereunder shall be valid unless entry of that transfer or assignment has been noted by the finance director in the lien docket, after appropriate filing in his office. In case any property remains unsold, at the discretion of the finance director, that property again may be offered for sale in like manner.

(4) At any time within the redemption period, which shall be one year from the date of certificate of sale, the owner, his legal representative or his successor in interest, any person having a lien by judgment, decree or mortgage, or the owner of a tax lien on property sold by the finance director may redeem it by paying to the finance director the purchase price to the certificate, plus the penalty and interest on the purchase price from the date of the certificate. However, if redemption is made within three months from the date of the sale, the penalty to be paid shall be 5 percent, or the penalty bid, whichever is the lesser. Redemption discharges the property from the effect of the sale. If redemption is made by a lien creditor, the amount paid for the redemption shall thereafter be a part of his lien, and shall bear like interest, and may be enforced and collected as a part thereof.

Upon redemption, the finance director shall note in his records a cancellation of the outstanding certificate of sale. Upon deposit of the sum paid in redemption, the finance director shall issue a check or

warrant for the amount paid to the holder of the certificate shown on the finance director's record.

(5) If the property is not redeemed during the redemption period, upon presentation of the certificate and demand by the holder, the finance director shall execute to that holder, his heirs and assigns, a deed conveying the properties sold, showing the date of the sale, the amount bid, the date of the assessment, a description of the assessment purpose, and a statement that the assessment was unpaid and the property not redeemed at the time of the sale. The deed shall contain no further recital of the proceedings prior to the sale. The finance director's deed conveys to the grantee the legal and equitable prima facie evidence that title is in the grantee and that all proceedings and acts necessary to make the deed good and valid in all respects have been done. Such evidence shall not be disputed, overcome or rebutted, or the effect thereof avoided, except by satisfactory proof:

(a) Of fraud in making or collecting the assessment;

(b) Of payment of the assessment before sale or redemption after sale; (c)

Of fraud by the purchaser that prevented payment or redemption; or

(d) That the property was sold for an assessment for which the property was not liable, and the owner at the time of sale was not liable. *[Section 2.185 as amended by Section 3 of Ordinance No. 73-05, passed May 7, 1973.]*

2.190 **Errors in Assessment Calculations**. Claimed errors in the calculation of assessments may be reported to the finance director, who shall determine whether there has been an error in fact. If the finance director finds that there has been an error in fact, he shall recommend to the city council an amendment to the assessment ordinance to correct the error; and upon enactment of such amendment, the finance director shall make the necessary correction in the lien docket and send a correct notice of assessment by registered or certified mail.

2.195 **Deficit Assessment**. If an assessment is made before the total cost of the improvement is ascertained, and if the amount of the assessment is insufficient to defray the expenses of the improvement, the city council, by motion, may declare the deficit and prepare a proposed deficit assessment. The city council shall set a time for hearing objections to the deficit

assessment and direct the finance director to publish one notice of the hearing in a newspaper of general circulation in the city. After the hearing, the city council, by ordinance, shall make a just and equitable deficit assessment, which shall be entered in the lien docket as provided by this code; and notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with this code. *[Section 2.195 as amended by Section 4 of Ordinance No. 73-05, passed May 7, 1973.]*

2.200 **Rebates**. If, upon completion of the improvement, the assessment previously levied on any property is more than sufficient to pay the costs of the improvement, the city council must ascertain and declare the same by ordinance; and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid, or his legal representative, is entitled to repayment of the rebate credit, or the portion which exceeds the amount unpaid on the original assessment.

2.205 **Cessation of Assessment Improvement District-Residual Equity Transfer**. The city council shall authorize the cessation of an improvement district when the following two conditions exist:

(1) All district liabilities have been paid and there are not any contingent liabilities.

(2) All assessments are either fully collected or are deemed by the city council to be uncollectible or collectable only upon the sale of the property to which the lien is attached.

Upon cessation, the city council shall authorize the transfer of any residual equity of the district to the General Fund. Any outstanding assessments (liens) will become assets of the General Fund. *[Section 2.205 amended by Ordinance No. 86-04, passed March 3, 1986.]*

2.210 **Abandonment of Proceedings**. The city council has full power and authority to abandon and rescind proceedings for any improvement made under this code at any time prior to the final completion of the improvement. If liens have been assessed upon any property under this procedure they shall be canceled, and any payments made on such assessments shall be refunded to the person paying them, his assigns or legal representatives.

2.215 **Curative Provisions**. No improvement assessment is rendered invalid because of a failure of any report to contain all the information required by Section 2.130 of this code, or because of a failure to have all the

information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices to be published and mailed; nor by the failure to list the name of, or mail notice to, the owner of any property as required by this code; or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining. The city council has the power and authority to remedy and correct all such matters by suitable action and proceedings.

2.220 **Reassessment**. Whenever any assessment, deficit assessment or reassessment for any improvement which has been made by the city is set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction, or when the city council doubts the validity of the assessment, deficit assessment or reassessment, or any part thereof, then the city council may make a reassessment in the manner provided by the laws of the state of Oregon.

ECONOMIC IMPROVEMENT DISTRICTS

2.225 **Definitions.** In Sections 2.225 to 2.240 of this code the following words and phrases mean:

(a) Economic improvement:

(1) The planning or management of development or improvement activities.

(2) Landscaping or other maintenance of public areas.

(3) Promotion of commercial activity or public events.

(4) Activities in support of business recruitment and development.

(5) Improvements in parking systems or parking enforcement.

(6) Any other economic improvement activity for which an assessment may be made on property specially benefitted thereby.

(b) Property benefitted. All non-residential property specifically benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the total cost of the improvement among the properties determined to be specially benefitted therefrom. Residential real property or any portion

of a structure used for residential purposes are specifically excluded from this definition .

2.230 **Advisory Committee**. Whenever the city council determines, either after petition by property owners or on its own motion, to make any economic improvement to be paid for in whole or in part by special assessment on the property benefitted, the city council shall appoint an advisory committee to study the need for the economic improvement, recommend the nature of the economic improvement, and to allocate expenditure of money for the economic improvement. The council shall strongly consider appointment of owners of property within the economic improvement district to the advisory committee. The advisory committee may be an existing association of property owners or tenants. An advisory committee may enter into an agreement with the city to provide the proposed economic improvement.

2.235 **Economic Improvement Ordinance**.

(1) Upon receiving the plans and recommendations of the advisory committee, the council may determine whether to proceed with the economic improvement, may modify such plans, may require more information, or may abandon the economic improvement. If the council by motion determines to proceed, then the council shall enact an ordinance that:

(a) Describes the economic improvement projects to be undertaken or constructed.

(b) Contains a preliminary estimate of the probable cost of the economic improvement and the proposed formula for apportioning cost to specially benefitted property.

(c) Describes the boundaries of the district in which property will be assessed.

(d) Specifies the number of years, to a maximum of three, in which assessments will be levied.

(e) Contains provision for notices to be mailed or delivered personally to affected property owners that announce the intention of the council to construct or undertake the economic improvement project and to assess benefitted property for a part or all of the cost. The notice shall state the time and place of the public hearing required under paragraph (f) of this subsection.

(f) Provides for a hearing not sooner than 30 days after the mailing or delivery of notices to affected property owners at which the owners may appear to support or object to the proposed improvement and assessment.

(2) The ordinance shall also:

(a) Provide that if, after the hearing held under paragraph (f) of subsection (1) of this section, the council determines that the economic improvement shall be made, the council shall determine whether the property benefitted shall bear all or a portion of the cost and shall determine, based on the actual or estimated cost of the economic improvement, the amount of assessment on each lot in the district.

(b) Require the city recorder or other person designated by the council to prepare the proposed assessment for each lot in the district and file it in the appropriate city office.

(c) Require notice of such proposed assessment to be mailed or personally delivered to the owner of each lot to be assessed, which notice shall state the amount of the assessment proposed on the property of the owner receiving the notice. The notice shall state the time and place of a public hearing at which affected property owners may appear to support or object to the proposed assessment. The hearing shall not be held sooner than 30 days after the mailing or personal delivery of the notices.

(d) Provide that the council shall consider such objections and may adopt, correct, modify or revise the proposed assessments.

(e) Provide that the assessment will not be made and the economic improvement project terminated when written objections are received at the public hearing from owners of the property upon which more than 33 percent of the total amount of assessments is levied.

(f) Provide for the enactment of an assessment ordinance in the event the council has moved to proceed with the economic improvement.

2.240 **Limitations**. Nothing in sections 2.225 to 2.240of this code authorize the city to:

(a) Levy assessments in an economic improvement district in any year that exceed one percent of the true cash value of all the real property located within the district.

(b) Include within an economic improvement district any area of the city that is not zoned for commercial or industrial use.

(c) Levy assessments on residential real property or any portion of a structure used for residential purposes.

(d) Create an economic improvement district after June 30, 1990.

[Sections 2.220 to 2.240 added by Ordinance No. 87-13, passed June 15, 1987.]

STREET VACATION PROCEDURES

Vacation of Public Ways

2.250 **Petition Required**. A person who wishes to vacate part or all of a street, avenue or alley may file a written petition for vacation and present it to the city auditor for submission to the city council.

2.255 **Contents of Petition**. The petition shall describe the street, avenue or alley to be vacated, the purpose for which the property is to be used, the reason for the vacation, and the names of the owners of real property abutting on the street, avenue or alley.

2.260 **Deposit Required with Petition**. A person presenting a petition for street vacation shall deposit an application fee as established in the Fee for Service Resolution, from which the Finance Director shall deduct the cost of publishing and posting notices of the proposed vacation, the cost of title search and such other costs as are incurred. If actual costs are more than the amount of the deposit, the Finance Director shall collect an additional amount sufficient to cover the deficiency before the vacation is complete. If the actual costs are less than the amount of the deposit the excess shall be refunded. *[Section 2.260 amended by Ordinance No. 84-02, passed January 3, 1984; amended by Ordinance No. 01-12, passed November 5, 2001.]*

2.265 **Action by City Council**. After notice to the petitioners of the proposed action, the city council may deny the petition or fix a time for a public hearing on the petition.

2.270 **Resolution of Intention**. Before the vacation of a part or all of a street, avenue or alley is ordered, the city council shall pass a resolution of intention to vacate, referring to the street, avenue or alley by its official or common

name and referring to a map or plan on file in the office of the city engineer for particulars of the proposed vacation. The resolution of intention shall fix a time and place for hearing objections to the proposed vacation. Written objections may be made and filed with the city auditor.

2.275 **Notice of Hearing**. The city auditor shall give notice of the petition and the hearing by publishing a notice once each week for two consecutive weeks in a newspaper of general circulation. The notice shall describe the street, avenue or alley covered by the petition, and the date when the petition and objections are heard and considered by the city council.

2.280 **Hearings by City Council**. After the hearing the city council may grant or deny the petition in whole or in part, or with reservations in the public interest, including reservations pertaining to the maintenance and use of underground public utilities in the part vacated.

2.285 **Reservation Required in All Vacation Ordinances**. Unless an agreement provides for removal or abandonment of public utility facilities, all vacation ordinances shall contain the following paragraph:

> "Nothing in this ordinance shall cause or require the removal or abandonment of any sewer, water main, gas main, conduit of any kind, wire, pole or object used or intended to be used for any public service and the right hereby is reserved for the owner of any such utility or object to maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge all utilities and objects."

2.290 **Authority to Make an Assessment**. The city council may make an assessment and provide for the payment to the city of a just and equitable amount as an assessment for special benefit upon the real property abutting upon the street, avenue or alley vacated. The assessment, together with all costs, except interest, shall not exceed the amount of special benefits resulting or inuring to the abutting property because of the vacation.

2.295 **Notice of Proposed Assessment Required**. Notice of proposed assessments for benefits shall be given to the owners of the property to be assessed at least seven days before the city council meeting at which assessments are to be considered or made. The city auditor shall cause notice to be given by publication in one issue of a newspaper of general circulation in the city, by personal service upon such property owners, or by registered mail.

2.300 **Vacation Granted on Condition of Payment of Benefits**. Adoption of a proposed street vacation ordinance may be conditioned upon the payment

of the assessments for benefits and the proposed street vacation ordinance shall not receive a final reading until the assessments have been paid.

2.305 **Denial of Petition**. If a petition for the vacation of a street or alley is completely denied, only the costs of publishing, posting, and searching title are retained out of the deposit.

2.310 **Money Deposited in General Fund**. Money retained and amounts assessed and collected as benefits shall be paid into the city treasury and may be used for general operational purposes.

PLANTINGS

Plantings in Sidewalk Areas

2.350 **Planting of Trees in Sidewalk Areas**.

(1) That no person, firm, or corporation shall plant, grow, or maintain any tree, shrub, or vegetable growth upon the sidewalks or sidewalk area (area between curb and property line) in the City of Astoria, or so close thereto that they overhang said sidewalks or sidewalk areas at a height of less than nine (9) feet, except as set forth in Section (2), without first obtaining a permit to do so from the Astoria City Engineer as hereinafter provided.

(2) That potted trees placed on or in said sidewalks or sidewalk areas as authorized by Section (1) shall not overhang said sidewalks or sidewalk areas at an elevation of less than seven (7) feet and shall not extend beyond the curb line at an elevation of less than nine (9) feet. Plantings are subject to the Vision Clearance Area requirements of City Code Section 6.100.

(3) That upon proper application filed by applicant setting forth all relevant facts relating to the request in question, the City Engineer may, in the exercise of his sound discretion, issue a permit or permits to persons, firms, or corporations to plant, grow, or maintain trees, shrubs, or vegetable growth in areas in which the same are prohibited by Section (1) hereof.

The City Engineer shall give consideration to the following factors in granting such permits and shall not grant the same unless he finds that to do so would not be detrimental to the public interest:

(a) Width of sidewalks, or sidewalk area.

(b) Type of tree, shrub, or vegetable growth.

(c) Location of parking meters, light standards, crosswalks, buildings, entrance and exit ways, streets, underground utilities, utility poles, alleys, loading zones, and other physical conditions and legal restrictions then existing or reasonably contemplated.

(d) Traffic count.

(e) Purpose of applicant.

(f) Any other factors found by him to be relevant.

(g) Size and type of containers if containers are used. The City Engineer shall designate in the permit or in an exhibit attached thereto the areas in which plantings shall be allowed, the type of plantings allowed, and any other condition or restriction that he deems necessary or expedient to protect the public interest.

(4) Each person, firm, or corporation planting, growing, or maintaining trees, shrubs, or vegetable matter under permit as herein provided shall comply with and be subject to the following general conditions and restrictions:

(a) The permittee shall abide by all of the terms, conditions, and restrictions contained in the permit.

(b) The permit shall be non-transferable without prior written approval of the City Engineer.

(c) The permit shall be revocable at any time with or without cause at the pleasure of the City Council and City Manager, and no expenditure of money, lapse of time, or any act or thing shall act as an estoppel against the City of Astoria or be held to give permittee or the owner of any property any vested right.

(d) The installation and care of such plantings shall be at the sole cost and expense of the permittee without cost to the City, and the sidewalks and sidewalk areas in the vicinity of the plantings and the structure served thereby shall be maintained in a good state of repair and maintenance at the sole cost and expense of the permittee. Such trimming repair and maintenance shall be performed annually or more frequently, as may be determined by the City Engineer.

(e) At the expiration or termination of the permit, the permittee shall forthwith remove any and all plantings and vegetable matter from the area at its own sole cost and expense and place the sidewalk in said area in a good condition of repair.

(f) That the permittee shall indemnify and save the City of Astoria, its officers, agents, officials, and employees harmless from any claim or award for damages or injuries to property or persons, including costs and attorney's fees, allegedly arising in whole or in part out of the use, occupation, or disruption of sidewalks or sidewalk areas by said permittee or those acting on his behalf or with his approval or ratification, or allegedly arising in whole or in part out of the failure by the permittee to abide by the terms of this ordinance and said permit.

(g) That the permittee shall remove, replace, or relocate individual plantings or vegetable growth as the public convenience or necessity warrants and at the request of the City Engineer.

(h) The owner of said property fronting on street or alley where the sidewalk or parking may be used for such purposes described herein will assume all liabilities resulting from such usage and hold the city harmless.

(i) No permit shall become effective unless the permittee named therein shall simultaneously with the issuance thereof, have filed with the City Engineer in form approved by him, a notice of acceptance of the terms, covenants, and conditions thereof and an agreement to abide by all of the terms, covenants, conditions, and obligations imposed on said permittee by this ordinance.

(5) Any applicant who feels aggrieved by any action taken by the City Engineer hereunder may file a written appeal with the City Council and City Manager of the City of Astoria setting forth in detail the reasons for such appeal, and thereupon the city council shall hear said appellant and any other relevant information and thereupon may ratify the stand taken by the City Engineer, or may take any action in relation to the grievance of the applicant that the City Engineer could take under the provisions hereof. *[Section 2.350 added by Ordinance No. 68-06, passed May 20, 1968; amended by Ordinance 14-04, passed April 21, 2014.]*

2.351 **Report of Defective Maintenance of Plantings**. Whenever any defective maintenance of plantings as specified in Section 2.350 of this code is discovered or reported to be defective, the public works director-city engineer shall report to the city manager who will in turn report to the city council the description of the adjacent or abutting property, the owner thereof, and the type of maintenance needed. *[Section 2.351 added by Ordinance No. 68-06, passed May 20, 1968.]*

2.352 **Notice of Defect to Abutting Owner**. Upon receipt of such report, the city council may declare the defective maintenance of plantings a nuisance and, if done, shall notify and direct the owner to repair the defective maintenance of plantings, and if so directed, the city manager shall notify the owner of such city council action by certified mail, return receipt requested, and by posted notice upon the property. The notice shall state that the defective maintenance of plantings specifically listed thereon shall be brought into a proper state of maintenance completely according to city specifications within 30 days after the notice is mailed and posted and that, if the owner does not comply with the notice, the city will cause the maintenance to be done and charge the cost thereof against the adjacent or abutting property as a lien. *[Section 2.352 added by Ordinance No. 68-06, passed May 20, 1968.]*

2.353 **City Maintenance of Defective Plantings; Abatement Procedures**.

(1) If the owner does not complete such maintenance within the time allowed, the city manager shall have the maintenance work done.

(2) The abatement procedures provided in Section 5.450 and Section 5.455 of this code shall be followed in abatement of a nuisance prohibited per Section 2.352 of this code. *[Section 2.353 added by Ordinance No. 68-06, passed May 20, 1968.]*

STREET WORK

2.360 **Development of Street Work in Platted Areas**.

(1) It shall be unlawful for any person, firm or corporation to excavate, fill, rock, pave, grade, repair or otherwise disturb any public street over which the city of Astoria has jurisdiction without prior authorization of the city of Astoria, either under this code or some other ordinance of the city of Astoria applicable thereto. It shall be unlawful for any person, firm or corporation to cause such work to be done without said prior authorization.

(2) It shall be unlawful for any person, firm or corporation to perform, or to authorize or cause to be performed, any street work provided for by this code until after the public works director or city engineer shall have

approved the grade for such street. Until a street grade shall have been approved by the city engineer or by street improvement proceedings under City of Astoria Code Sections 2.125 to 2.220 of the city of Astoria, no permit shall be issued for the construction of a building which fronts and abuts such street.

The planning commission may grant a variance from street improvement standards if it finds that by reason of terrain or other conditions then existing the portion of street in question is not suitable for opening and improving for public use, and in granting such variance the planning commission may impose conditions.

(3) The owners of property adjacent to any street or alley within the city of Astoria, or other interested persons and/or their agents, may make application to the city engineer of the city of Astoria for a permit to make improvements to such street or alley, subject to the terms of the Astoria Code and such other terms and conditions as may be required by said city engineer.

(4) Where any street work is proposed to be done under the terms of this code, the city manager may require that such work be done under the supervision and direction of the city engineer, and may charge fees for such inspection, supervision, or other work required by the city manager. The city engineer may also impose such terms and conditions as may be necessary to secure the deposit of earth or other matter excavated from the street upon part thereof which may need to be filled. The city manager may also require that a bond and/or public liability insurance policy be furnished to the city of Astoria before any work is authorized under the terms of this code.

(5) No person, firm, or corporation contracting to perform any street work under the terms of this code shall have any recourse against the city of Astoria, or its officers or employees, or any lien rights upon the streets of the city of Astoria, for the payment of any such contract, labor, or materials; and such person, firm or corporation shall rely only upon the party or parties contracting for such street work and shall have only such lien rights on adjacent property as may be provided for under the laws of the state of Oregon. This section shall not be construed to apply to any street work contracted for by the city of Astoria on an authorized public improvement district.

(6) This opening or improvement of any street or alley under the provisions of this code shall not impose upon the city of Astoria any duty to repair or maintain said street or alley; provided, however, that after the completion

of such a street improvement, the council may, after hearing reports from the city manager and/or city engineer and, after making such investigation as it deems necessary, accept such street or alley for ordinary maintenance and repair.

(7) The terms of this code, where applicable, shall apply to the laying out and construction of sidewalks in the city of Astoria in addition to streets.

(8) It shall be unlawful for any person, firm, or corporation to make any opening in an improved street in the city of Astoria without first obtaining from the city engineer a permit therefor and signing a written agreement undertaking to restore said street to substantially its previous condition within the time limit prescribed in said permit. The city engineer may require such person, firm, or corporation to deposit with the city finance director a cash deposit or bond to secure the proper restoration of said street to substantially its previous condition. The permit and deposit provided for in this section shall not be required of any person, firm, or corporation operating under a franchise from the city of Astoria where provision is made in such franchise for street openings.

Any person, firm, or corporation making any street opening in the city of Astoria, whether under the provisions of this section or not, shall have the duty to provide proper and adequate signals, signs, lights, or barricades for the protection of the traveling public. *[Section 2.360 added by Ordinance No. 79-01, section 1, passed February 5, 1979.]*

2.365 <u>Regulation for Development of Street Work in Unplatted Areas</u>.

(1) There shall be no public or private improvement work performed upon any dedicated street, alley, or way over which the city of Astoria has jurisdiction unless and until the planning commission of the city of Astoria has filed its approval of such street, alley, or way with the finance director of the city of Astoria, or has endorsed the plat of which the street, alley, or way is a part.

(2) The council of the city of Astoria shall have the right and power to refuse to extend sewer mains and/or water mains on any dedicated street which has not been either opened or improved by the city of Astoria or opened and improved under the regulations set forth in this code. No sewer or water main shall be extended by the city of Astoria upon any dedicated street which is not a part of a recorded plat or which has not been accepted by the planning commission as an authorized street outside of a recorded plat. Nothing in this section shall be construed to limit the powers of the city of Astoria to refuse sewer and water main extensions under the terms of the Astoria Code relating thereto.

(3) It shall be unlawful for any person, firm, or corporation to subdivide or divide into two or more parts and sell one or more such parts of any parcel of land not within a recorded plat which lies adjacent to a street, alley, or way, which has been dedicated to the public in the city of Astoria, but which has not been approved by the planning commission of the city of Astoria; and where such approval has not been obtained, the building inspector of the city of Astoria shall not issue a building permit for such lot or parcel of land.

(4) No person, either as owner or agent, shall dispose of, transfer, sell, or agree, offer, or negotiate to sell any lot or parcel of land in any subdivision until the plat thereof has been approved by the planning commission of the city of Astoria and has been acknowledged and recorded in the office of the county clerk of Clatsop County, Oregon.

No person shall create any street or way for the purpose of partitioning a parcel of land without first obtaining the approval of planning commission of the city of Astoria.

(5) Whereas, work on public streets which is not authorized by the city of Astoria is causing damage to such streets and to adjoining property; whereas, streets are being laid out and dedicated to the public in an irregular manner and without relation to existing streets or the proper development of such areas within the city; and whereas, land is being divided into parcels and sold for building lots without proper access thereto, and without relation to the terrain, so that it is difficult to provide adequate municipal services thereto; ... it is in the interest of the public welfare, safety, convenience, and health that action be taken hereon. *[Section 2.365 added by Ordinance No. 79-01, section 2, passed February 5, 1979.]*

[Sections 2.400 through 2.440 repealed by Ordinance No. 87-21, section 2, passed December 21, 1987.]

2.500 <u>Permit for Removing Trees from Unopened City Right-of-Way.</u>

(1) Prior to removing trees from unopened city rights-of-way, the owner of the underlying fee shall obtain a permit from the city engineer. In granting a permit, the city engineer shall make a written finding that one of the following criteria exists:

(a) Necessity to remove tree(s) which pose a safety hazard.

(b) Necessity to remove diseased tree(s) weakened by age, storm, fire, or other injury.

(c) Need for solar access, or the obtaining of views which cannot be accomplished by pruning.

(d) Commercial harvesting is appropriate and removal of the trees poses no threat to the physical integrity of the right-of-way or adjacent property.

(e) Necessity of the owner of the underlying fee to temporarily use a portion of the right-of-way for purpose of access to their property.

(2) A denial of a permit may be appealed to the city council if notice of such appeal is filed with the finance director within 15 days of the date of denial. *[Section 2.500 added by Ordinance No. 88-08, passed June 6, 1988.]*

STREET NAMES

Adoption of Street Map

2.525 **Street Map Adopted**. There is hereby established an official system of street names for the city as shown on the map entitled "Map and plat of the City of Astoria," dated May 16, 1955. The map is adopted as a part of this code, and shall be kept on file in the Public Works Department. *[Section 2.525 added by Ordinance No. 94-13, passed November 7, 1994.]*

2.530 **Changing Street Names**.

(1) Names of streets in the city shall remain as shown on said map and plat unless officially changed by ordinance.

(2) No new streets shall be accepted by the city nor municipal improvements made therein until such streets have been named. If the street is an extension of an existing street, the existing name shall be continued, and if not an extension, the new name recorded shall not duplicate or closely approximate a street name already assigned. *[Section 2.530 added by Ordinance No. 94-13, passed November 7, 1994.]*

FACILITIES WITHIN RIGHTS-OF-WAY

2.700 Purpose and Intent. The intent of this Chapter is to:

A. Manage access to the rights-of-way of the City for utility and other purposes consistent with applicable state and federal law;

B. Assure that the City's costs of regulating the use of these rights-of-way are fully compensated by the persons seeking such access and causing such costs;

C. Secure reasonable compensation to the City for permitting use of City owned 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. Encourage advanced and competitive utility services to businesses and residents of the City.

2.705 Regulatory Fees and Compensation.

A. Except as provided in ORS 221.515, the fees provided for in this Chapter are separate from, and in addition to, all other City charges, franchise fees or contractual obligations as may be due from a utility operator.

B. The City has determined that the fees provided for by this Chapter are not imposed on property or property owners and are not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

2.710 Definitions.

As used in this Chapter the following terms shall have the following meanings.

"Cable service" is used consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City" means the City of Astoria.

"City Council" means the Common Council of the City of Astoria Oregon.

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

"Communications services" means any service provided for the 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. Communications service 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.

"Director" means the acting head of the Astoria Public Works Department

"Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

"Person" means and 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" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service that 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" means the space in, upon, above, along, across, over or under an easement dedicated to the City or the Public 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.

"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, bridges, trails, 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, or other City property not generally open to the public for travel.

"State" means the state of Oregon.

"Utility facility" or "facility" means 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" means any person who owns, places, operates or maintains a utility facility within the City.

"Utility service" means the provision, 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, of electricity, natural gas, telecommunications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

"Work" means 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. Work does not include routine repairs, maintenance or minor construction activities so long as such activities: (i) do not impact vehicular, pedestrian, or bicycle traffic by closing, blocking or partially obstructing a lane of travel; and (ii) do not require cutting, breaking or excavating a Right-of-way.

2.715 <u>Annual Utility Permits</u>.

A. No person may perform work on utility facilities within the rights-of-way without first obtaining a Utility Permit.

B. Utility Permits shall be issued annually to franchised utility operators. Permit fees shall be set by the Director and designed to reimburse the city for its costs of inspection, supervision, and regulation in regulating utility work within city rights-of-way. Applications for permits to construct utility facilities shall be submitted upon forms provided by the City.

C. Utility Permit shall require:

1. That all construction will be done in accordance with applicable laws and regulations.

2. That, except in the case of an emergency, at least 7 days prior to the commencement of any work in a city right-of-way that notice be given the director of the location and construction schedule.

3. That within 30 days of completion of any work “as built” engineered plans be provided to the Director in an acceptable digital form City showing the location of the utility facilities that were installed, replaced, repaired, or relocated.

4. That utility operators 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.

5. That prior to January 1st of each year, utility operators provide the Director with a schedule of known proposed construction activities for that year in, around or that may affect the rights-of-way.

6. That construction locations, activities and schedules within the rights-of-way be coordinated as ordered by the Director to minimize public inconvenience, disruption, or damage.

D. Utility Permit may require:

1. That the utility operator provide a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the rights-of-way of the City, which shall be provided before construction is commenced.

2. The performance bond or other form of surety acceptable to the City shall remain in force for the period of the permit.

3. The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

a. Timely completion of the work;

b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;

c. Proper location of the facilities as specified by the City;

d. Restoration of the rights-of-way and other property affected by the work; and

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

2.720 Construction and Restoration.

A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable laws and regulations. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator shall promptly restore the rights-of-way as reasonably directed by the Director. A utility operator or other person acting on its behalf shall use suitable measures for the safety of the general public and to prevent injury or damage to persons or property by reason of such work.

B. Injury to Persons or Property. A utility operator shall use reasonable efforts to 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 reasonably 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.

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 Director.

2. If conditions beyond the operator's control prevent restoration as required by the City, the 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 conditions no longer prevent permanent restoration. Any corresponding modification to the construction schedule shall be subject to City approval.

3. If the operator fails to complete the required restoration, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten (10) days and not more than thirty (30) days to restore the rights-of-way or property, unless an emergency or threat to public safety is deemed to exist. If the utility operator fails to restore the rights-of-way or property as required, the City may cause such restoration to be made at the expense of the 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 Chapter 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 Chapter and applicable state and City codes, ordinances, rules and regulations.

2.725 Location of Facilities.

A. Unless otherwise agreed to in writing, a utility operator shall, at its own expense, locate all new facilities underground within the district described in the Code of Astoria §9.215. In other neighborhoods where existing utilities are located underground in City rights-of-way, new facilities shall be located underground if commercially reasonable to do so.

B. No person may locate or maintain facilities so as to unreasonably interfere with the use of City rights-of-way, by the general public or by others authorized to use the rights-of-way.

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 for public safety or public convenience.

2. Nothing herein shall be deemed to preclude the utility operator, subject to OAR 860-022-0046 or other applicable agreement, franchise, law or regulation, from requiring reimbursement or compensation from a third party whose project is the reason for relocating utilities.

3. The City shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. Prior to providing such notice, the Director shall meet with the utility operator to establish a reasonable timeline for such action. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the reasonable date 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 thirty (30) days.

D. Removal of Utility Facilities.

1. Except as prescribed by law or otherwise agreed in writing by the Director, within thirty (30) days following written notice, 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 under a 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 (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

   c. The utility facility is unlawfully or improperly constructed or installed or is in a location not permitted by a construction permit, license, franchise or this Chapter.

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

3. If the utility operator fails to remove any facility, without reasonable cause, when required to do so, the City may remove the facility, and the expense of the utility operator. Within thirty (30) days of the receipt of an invoice from the City, a utility operator shall reimburse the City for its costs of removal. This obligation to remove shall survive termination of any license or franchise agreement.

4. The City may cut or move any facilities located within City rights-of-way, without notice, as the City may determine to be necessary, appropriate or useful in response to an immediate public health or safety emergency. The City shall promptly notify the utility of such action.

5. The City is not liable to any utility operator for damage to utility facilities, or for consequential losses resulting from removing, relocating or altering utility facilities, except to the extent such damage arises directly from the City's negligence or willful misconduct.

E. At the Director's request a utility operator shall provide the City with two complete sets of engineered plans in a digital format reasonably acceptable to both parties showing the location of its utility facilities in the rights-of-way.

2.730 **Leased Capacity.** No utility operator may lease capacity upon the system of the utility operator to another person or entity for the purpose of providing utility services in the City unless that person or entity possesses a franchise from the City and is operating in compliances with the charter and regulations of the City. Utility Operator shall include a provision in its leases requiring that such lessee comply with all City laws, regulations and policies as set forth herein.

2.735 **Maintenance.** Every utility operator must install and maintain its facilities in compliance with all applicable laws, regulations and policies. If, after reasonable written notice, a utility operator fails to repair and maintain facilities as requested by the City, the City may perform such repair or maintenance at the utility operator's expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

2.740 **Vacation.** If the City vacates a right-of-way, or portion thereof, a utility operator must remove its facilities from the right-of-way unless the utility operator obtains an easement for its facilities. If the utility operator is unable to reserve or obtain an easement for its existing facilities the city will make reasonable efforts to provide another location for the utilities in a public right-of-way.

2.745 **Audits.**

A. Within sixty (60) 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 Chapter and its franchise agreement, if any, including but not limited to payment of any applicable fees.

2. Every utility operator shall make available for inspection by the City at reasonable times, after no less than 60 days notice, and upon reasonable intervals, all maps, records, books, diagrams, plans and other documents, maintained by the 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 five percent (5%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to interest at the legal rate or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within sixty (60) days of the City's notice to the utility service provider of such underpayment.

D. The City's audit shall be limited to payments which occurred during a period of thirty-six (36) months prior to the date the City requests an audit review

2.750 **Penalties.** Any person found guilty of violating any of the provisions of this Chapter shall be subject to a penalty of not less than One Hundred Dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues. Nothing in this Chapter shall be construed as limiting judicial or other remedies the City may have for enforcement of this Chapter.

2.755 **Severability and Preemption.** The provisions of this Chapter are intended to be consistent with applicable federal and state law, and, to the extent possible, to cover only matters not preempted by federal or state law. If any part of this Chapter is held to be unenforceable by a court of competent jurisdiction or is superseded by any state or federal legislation, rule, regulation or decision, the remainder of this Chapter shall not be affected but shall be deemed as a separate, and independent provision. If any federal or state law resulting in preemption is later repealed 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.

[Sections 2.700 to 2.755 added by Ordinance No. 12-13, passed December 17, 2012.]