

PREFACE

This Code constitutes a republication of the general and permanent ordinances of the City of John Day, Oregon.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
CODE	T1:1
APPENDIX	APP:1
CHARTER INDEX	CHTi:1
CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the (index itself or indexes themselves) which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

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ORDINANCE NO. 82-29-01

AN ORDINANCE ENACTING THE JOHN DAY CITY CODE AS THE LAW OF THE CITY OF JOHN DAY,
REPEALING CERTAIN ORDINANCES OF THE CITY, AND DECLARING AN EMERGENCY.

THE CITY OF JOHN DAY ORDAINS AS FOLLOWS:

Section 1. Adoption of John Day City Code. The provisions of a published document marked and designated as the "City Code of John Day, Oregon", filed in the office of the City Recorder, and continuously available for public inspection, are hereby enacted as the general and permanent law of the City of John Day.

Section 2. Code Provisions as Law. The provisions of the John Day City Code adopted in Section 2 of this Ordinance are the law of the City of John Day and are not merely prima facie evidence of the law.

Section 3. Effective Date of John Day City Code. The provisions of this Ordinance and of the John Day City Code shall take effect immediately upon passage and approval of this Ordinance in accordance with Section 7 hereof.

Section 4. Repeal of Existing General Ordinances. The following City of John Day general ordinances are hereby repealed:

9	75-01
53	75-02
111	75-04
131	75-07
211	75-09
253	75-10
263	75-11
286	76-03
325	76-04
63-01	76-05
67-01	77-02
67-02	77-08
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67-04	77-16
67-05	78-04
67-06	79-03
68-03	79-06
68-07	79-08
68-08	79-09
68-13	80-13-01
69-04	80-14-02
70-03	80-16-04
70-08	80-18-06
71-02	80-19-07
71-07	80-20-08
71-08	81-22-02
74-03	81-27-07
74-07	81-28-08

Section 5. General Savings Provisions.

(1) This Ordinance and the John Day City Code shall not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this Ordinance.

(2) The repeal provisions of this Ordinance and the provisions of the John Day City Code shall not affect or impair any act done, offense committed or liability, obligation, penalty, forfeiture or punishment incurred before the effective date of this Ordinance.

Section 6. Continuity of Existing Provisions.

(1) The provisions of the John Day City Code that are the same in substance as ordinance provisions of the City in effect immediately before the John Day City Code becomes effective are construed as restatements and continuations of the prior provisions.

(2) Nothing in this Ordinance or in the John Day City Code affects the legal status of a nonconforming use.

(3) For purposes of adoption of the John Day City Code, the members of the City Planning Commission, and members of all other City offices, official positions, boards or commissions created under any ordinance repealed by this Ordinance shall continue to hold office for the period of time specified in the repealed ordinance.

(4) Any person who holds a license, permit, right or privilege granted under an ordinance repealed by this Ordinance may continue to operate under and use such license, permit, right or privilege until expiration thereof according to the terms of the ordinance under which the license, permit, right or privilege is issued, unless the same is revoked sooner by the City Council.

Section 7. Emergency Clause. Inasmuch as the objects of this Ordinance will be of great benefit to the people of the City of John Day and there is and exists an urgent necessity that this Ordinance should take effect as soon as possible in order to protect the health, peace and safety of the inhabitants of the City of John Day, an emergency is declared to exist and this Ordinance shall take effect immediately upon its passage by the Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of John Day this 26th day of January, 1982.

ATTEST _____

City Recorder of the City of John Day, Oregon

APPROVED by the Mayor this 26th day of January, 1982.

Mayor of the City of John Day, Oregon

CHARTER

Enacted 1976

Replaced 1993

PREAMBLE

We, the people of the City of John Day, Oregon, in order to avail ourselves of self-determination ¹ in municipal affairs to the fullest extent now or hereafter possible under the constitutions and laws of the United States and the State of Oregon, through this charter confer upon the city the following powers, subject it to the following restrictions, prescribe for it the following procedures and governmental structure, and repeal all previous charter provisions of the city, unless stated otherwise elsewhere in this charter.

Chapter I - NAMES AND BOUNDARIES

Section 1. - Title of Charter.

This charter may be referred to as the 1993 City of John Day Charter.

Section 2. - Name of City.

The City of John Day, Oregon, continues ² under this charter to be a municipal corporation with the name City of John Day.

Section 3. - Boundaries.

The city includes all territory within its boundaries as they now exist or hereafter are modified pursuant to state law ³. The custodian of the city's records shall keep an accurate, current description of the boundaries and make a copy of it available for public inspection in the city during regular city office hours.

Chapter II - POWERS

Section 4. - Powers of the City.

The city has all powers that the constitutions, statutes and common law of the United States and of this State now or hereafter expressly or impliedly grant ⁴ or allow ⁵ the city, as fully as though this charter specifically enumerated each of those powers.

Section 5. - Construction of Powers.

In this charter, no specification of a power is exclusive or restricts authority that the city would have if the power were not specified ⁶. The charter shall be liberally construed ⁷, so that the city may exercise fully all its powers possible under this charter and under United States and Oregon law. All powers are continuing unless a specific grant of power clearly indicates the contrary ⁸.

Section 6. - Distribution of Powers.

Except as this charter prescribes otherwise and as the Oregon Constitution reserves municipal legislative power to the voters of the city, all powers of the city are vested in the council.

Chapter III - FORM OF GOVERNMENT

Section 7. - Council.

The council consists of a Mayor and six councilors nominated and elected from the city at large or, in case of one or more vacancies in the council, the council members whose offices are not vacant ⁹.

Section 8. - Councilors.

The term of office of a councilor in office when this charter is adopted is the term of office for which the councilor has been elected before adoption of the charter. At each general election after the adoption, three councilors shall be elected, each for a four-year term.

Section 9. - Mayor.

The term of office of the mayor in office when this charter is adopted continues until the beginning of the first odd-numbered year after that time. At each subsequent general election, a mayor shall be elected for a four-year term.

Section 10. - Terms of Office.

The term of office of an elective officer who is elected at a general election begins at the first council meeting of the year immediately after the election and continues until the successor to the office assumes the office.

Section 11. - Appointive Offices.

A majority ¹⁰ of the council shall appoint and may remove a city manager. The majority may:

- (1) Create, abolish and combine ¹¹ additional appointive offices and,
- (2) Except as the majority prescribes otherwise ¹², fill such offices by appointment and vacate them by removal.

Chapter IV - COUNCIL

Section 12. - Rules.

The council shall, by ordinance, prescribe rules to govern its meetings and proceedings.

Section 13. - Meetings.

The council shall meet in the city regularly at least once a month at a time and place designated by council's rules, and may meet at other times in accordance with the rules.

Section 14. - Quorum.

A majority of the council constitutes a quorum for its business ¹³, but a smaller number of the council may meet and compel attendance of absent councilors as prescribed by council rules.

Section 15. - Record of Proceedings.

A record of council proceedings shall be kept and authenticated in a manner prescribed by the council.

Section 16. - Mayor's Functions at Council Meetings.

- (1) When present at Council meetings the mayor shall:
 - (a) Preside over deliberations of the council,
 - (b) Preserve order,
 - (c) Enforce council rules, and
 - (d) Determine the order of business under the rules.
- (2) Notwithstanding subsection (1) of this section, the mayor may temporarily cease to chair a council meeting and delegate the functions described in subsection (1) to another council member.
- (3) The mayor is a voting member of the council.

Section 17. - Council President.

- (1) At its first meeting after this charter takes effect and at its first meeting of each odd-numbered year, the council shall appoint a president from its councilors.
- (2) Except in voting on questions before the Council ¹⁴, the President shall function as mayor when the mayor is:
 - (a) Absent from a council meeting, or
 - (b) Unable to function as mayor.

Section 18. - Vote Required.

Except as sections 11, 20, 22, 32, and 34 of this charter prescribe otherwise, the express concurrence of a majority of the council members present and constituting a quorum is necessary to decide affirmatively a question before the Council ¹⁵.

Section 19. - Vacancies: Occurrence.

The office of a member of the Council becomes vacant:

- (1) Upon the incumbent's:

- (a) Death,
 - (b) Adjudicated incompetence ¹⁶, or
 - (c) Recall from the office; or
- (2) Upon declaration by the council of the vacancy in case of the incumbent's:
 - (a) Failure, following election or appointment to the office, to qualify for the office within ten days after the time for his or her term of office to begin,
 - (b) Absence from the city for thirty days without the council's consent or from all meetings of the council within a sixty day period,
 - (c) Ceasing to reside in the city,
 - (d) Ceasing to be a qualified elector under state law ¹⁷,
 - (e) Conviction of a public offense punishable by loss of liberty, or
 - (f) Resignation from the office.

Section 20. - Vacancies: Filling.

A vacancy in the council shall be filled by appointment by a majority of the Council ¹⁸. The appointee's term of office runs from the time of his or her qualifying for the office after the appointment and until expiration of the term of the predecessor who has left the office vacant. During a council member's disability to serve on the council or during a member's absence from the city, a majority of the other council members may by appointment fill the vacancy pro tem ¹⁹.

Chapter V - POWERS AND DUTIES OF OFFICERS

Section 21. - Mayor.

- (1) The mayor shall appoint:
 - (a) Members of committees established by council rules, and
 - (b) Other persons required by the council to be so appointed.
- (2) Shall not have veto power.

Section 22. - City Manager.

- (1) The city manager is the administrative head of the city government.

- (2) A majority of the council shall appoint and may remove the manager. The appointment shall be without regard to political considerations and solely on the basis of administrative qualifications.
- (3) The manager need not reside in the city or the State when appointed but thereafter shall become, and during his or her tenure of office remain, a resident of the city, unless given a waiver by a majority of the Council ²⁰.
- (4) Upon accepting the appointment, the manager shall furnish the city a bond in an amount and with a surety approved by the Council. The city shall pay the bond premium.
- (5) The manager shall be appointed for a definite or an indefinite term and may be removed by the Council at its pleasure. Within six consecutive months after a vacancy occurs in the office, the Council shall fill the vacancy by appointment.
- (6) The manager shall:
 - (a) Attend all council meetings unless excused by the council or mayor;
 - (b) Keep the council advised of the affairs and needs of the city;
 - (c) See that the provisions of all ordinances are administered to the satisfaction of the council;
 - (d) See that all terms of franchises, leases, contracts, permits and privileges granted by the city are fulfilled;
 - (e) Hire, discipline and remove appointive personnel, except appointees of the mayor or council;
 - (f) Supervise and control the personnel in their service to the city;
 - (g) Organize and reorganize the departmental structure of the city government;
 - (h) Prepare and transmit to the council an annual city budget;
 - (i) Supervise city contracts;
 - (j) Supervise operation of all city-owned public utilities and property; and
 - (k) Perform other duties as the council prescribes consistently with this charter.
- (7) The manager may not control:
 - (a) The council;
 - (b) The municipal judge in the judge's judicial functions; or
 - (c) Except as the council authorizes, appointive officers of the city.

- (8) The manager and other personnel whom the council designates may sit with the council but may not vote on questions before it. The manager may take part in all council discussions.
- (9) When the manager is absent from the city or disabled from acting as manager, or when the office of manager becomes vacant, the council shall appoint a manager pro tem, who has the powers and duties of manager, except that the manager pro tem may appoint or remove personnel only with approval of the council. No persons may be manager pro tem more than six consecutive months.
- (10) Except in council meeting, no council member may direct or indirectly, by suggestion or otherwise, attempt to influence the manager or a candidate for the office of manager in the hiring, discipline or removal of personnel or in decisions regarding city property or contracts. A violator of this prohibition may be removed from office by a court of competent jurisdiction. In council meeting, members of the council may discuss with, or suggest to, the manager anything pertinent to city affairs ²¹.

Section 23. - Municipal Court and Judge.

- (1) If the council creates the office of municipal judge and fills it by appointment, the appointee shall hold, within the city at a place and times that the council specifies, a court known as the Municipal Court for the City of John Day, Grant County, Oregon.
- (2) Except as this charter or city ordinance prescribes to the contrary, proceedings of the court shall conform to general laws of this state governing justices of the peace and justice courts.
- (3) All area within the city and, to the extent provided by State law, area outside the city is within the territorial jurisdiction of the court.
- (4) The municipal court has original jurisdiction over every offense that an ordinance of the city makes punishable. The court may enforce forfeitures and other penalties that such ordinances prescribe.
- (5) The municipal judge may:
 - (a) Render judgments and, for enforcing them, impose sanctions on persons and property within the court's territorial jurisdiction;
 - (b) Order the arrest of anyone accused of an offense against the city;
 - (c) Commit to jail or admit to bail anyone accused of such an offense;
 - (d) Issue and compel obedience to subpoenas;

- (e) Compel witnesses to appear and testify and jurors to serve in the trial of matters before the court;
 - (f) Penalize contempt of court;
 - (g) Issue process necessary to effectuate judgments and orders of the court;
 - (h) Issue search warrants; and
 - (i) Perform other judicial and quasi-judicial functions prescribed by ordinance.
- (6) The Council may authorize the municipal judge to appoint municipal judges pro tem for terms of office set by the judge or the council.
- (7) Notwithstanding this section, the Council may transfer some or all of the functions of the municipal court to an appropriate state court.

Chapter VI - PERSONNEL

Section 24. - Qualifications.

- (1) An elective city officer ²² shall be a qualified elector under the state constitution ²³ and shall have resided in the city during the twelve months immediately before being elected or appointed to the office. In this subsection "city" means area inside the city limits at the time of the election or appointment.
- (2) No person may be a candidate at a single election for more than one elective city office.
- (3) An elective officer may be employed in a city position that is substantially volunteer in nature ²⁴. Whether the position is so may be decided by the municipal court or in some other manner, whichever the council prescribes.
- (4) Except as subsection (3) of this section provides to the contrary, the council is the final judge of the election and qualifications of its members.
- (5) The qualifications of appointive officers, except the qualifications of the city manager as provided in Section 22, of the city are whatever the council prescribes or authorizes.

Section 25. - Compensation.

The council shall prescribe the compensation of city officers. The council may prescribe a plan for reimbursing city officers for expenses that they incur in serving the city and also free residential water and/or sewer service.

Section 26. - Merit System.

Subject to council approval and to all collective bargaining agreements between the city and one or more groups of its employees, the city manager shall prescribe rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees, all of which shall be based on merit and fitness.

Section 27. - Political Rights.

By ordinance the council may affirm the rights of city personnel to participate in political activities and may limit those activities to the extent necessary for orderly and effective operation of the city government.

Section 28. - Oath.

Before assuming city office, an officer shall take an oath or shall affirm that he or she will faithfully perform the duties of the office and support the constitution and laws of the United States and of the state of Oregon.

Chapter VII - ELECTIONS

Section 29. - State Law.

Except as this charter or a city ordinance prescribes to the contrary, a city election shall conform to state law applicable to the election.

Section 30. - Nominations.

A person may be nominated in a manner prescribed by general ordinance to run for an elective office of the city.

Chapter VIII - ORDINANCES

Section 31. - Ordaining Clause.

The ordaining clause of an ordinance shall be "The City of John Day ordains as follows:"

Section 32. - Adoption by Council.

- (1) Except as subsection (2) of this section allows adoption at a single meeting and subsection (3) of this section allows reading by title only, an ordinance shall be fully and distinctly read in open council meeting on two different days before being adopted by the council.
- (2) Except as subsection (3) of this section allows reading by title only, the council may adopt an ordinance at a single meeting by the express unanimous votes of all council members present, provided the ordinance is read first in full and then by title.
- (3) A reading of an ordinance may be by title only if:
 - (a) No council member present at the reading requests that the ordinance be read in full, or
 - (b) At least one week before the reading:
 - (i) A copy of the ordinance is provided for each council member,
 - (ii) Three copies of the ordinance are available for public inspection in the office of the custodian of city records, and
 - (iii) Notice of their availability is given by written notice posted at the city hall and two other public places in the city.
- (4) An ordinance read by title only has no legal effect if it differs substantially from its terms as it was filed prior to the reading unless each section so differing is read fully and distinctly in open council meeting before the council adopts the ordinance.
- (5) Upon the adoption of an ordinance, the ayes and nays of the council members shall be entered in the record of council proceedings.
- (6) After adoption of an ordinance, the custodian of city records shall endorse it with its date of adoption and the endorser's name and title of office.

Section 33. - Effective Date.

A non-emergency ordinance takes effect on the thirtieth day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as adopted ²⁶.

Chapter IX - PUBLIC IMPROVEMENTS

Section 34. - Procedure.

- (1) The procedure for making, altering, vacating or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by applicable state law. Proposed action on a public improvement that is not declared by two-thirds of the council present to be needed at once because of an emergency shall be suspended for six months upon remonstrances by owners of land to be specially assessed for the improvement. The number of owners necessary to suspend the action shall be prescribed by general ordinance. A second such remonstrance suspends the action only with the consent of the council.
- (2) In this section "owner" means the record holder of legal title or, as to land being purchased under a landsale contract that is recorded or verified in writing by the record holder of legal title, the purchaser.

Section 35. - Special Assessments.

The procedure for fixing, levying and collecting special assessments against real property for public improvements or other public services shall be governed by general ordinance.

Chapter X - MISCELLANEOUS PROVISIONS

Section 36. - Debt.

The city's indebtedness may not exceed debt limits imposed by state law ²⁷. A city officer or employee who creates or officially approves indebtedness in excess of this limitation is jointly and severally liable for the excess. A charter amendment is not required to authorize city indebtedness.

Section 37. - Continuation of Ordinances.

Insofar as consistent with this charter, and until amended or repealed, all ordinances in force when the charter takes effect retain the effect they have at that time.

Section 38. - Repeal.

All charter provisions adopted before this charter takes effect are hereby repealed-save and except: Section 42 Sub A and B-sub 2, sub 3 of 1976 Charter.

Section 39. - Severability.

The terms of this charter are severable. If a part of the charter is held invalid, that invalidity does not affect another part of the charter, except as the logical relation between the two parts requires.

Section 40. - Time of Effect.

This charter takes effect January 1, 1994.

ENDNOTES

1. This phrase regarding self-determination is based on the long-standing definition of home rule as broadly including "all forms of local or regional self-determination" (W. Munro, "Home Rule," 4 Encyclopedia of Social Sciences 434 (1932)).
2. Adoption of a new charter does not break the continuity of the City's existence. A municipal corporation "does not lose its identity or become relieved of its liabilities by any change of its charter or by the substitution of a new charter in place of the old, unless there is an express legislative declaration to that effect. 6 McQuillin, Municipal Corporations, sec. 21.25, 3d ed. rev (1980). See also id., sec. 9.33, 3d ed. rev. (1979).
3. Because municipal annexation inherently involves exercise of power outside a city—that is, extramural power (Schmidt v. City of Cornelius, 211 Or. 505, 517, 316 P.2d 511 (1957))—and because the home rule powers of a city and its voters are intramural only (e.g., Curtis v. Tillamook City, 88 Or. 443, 454-55, 171 P. 574, 172 P. 122 (1918))—annexation can take place

only as authorized by state law. Cf *Flavel Land and Development Co. v. Leinenweber*, 81 Or. 353, 355, 158 P. 945 (1916). The opposite of annexation (i.e., detachment or withdrawal of territory from a city) involves only intramural action and is therefore accomplishable solely by the city and its voters. *Schmidt v. City of Cornelius*, 211 Or. 505, 517, 518, 316 P.2d 511 (1957). City boundaries, however, have an intergovernmental impact. O. Etter, "Oregon's Law of City Boundaries," in Central Lane Planning Council, *Local Boundaries: Two Position Papers* (1969), 19, 34. The State legislature has prescribed procedures for municipal withdrawal (Or. Laws 1939, c. 349, invalidated by *Schmidt*, supra, at 529, and repealed by Or. Laws 1969, c. 49, sec. 1; ORS 222.460 and 222.465, adopted in 1985).

4. The Municipal home rule amendments to the Oregon Constitution reserve certain powers to city voters (Or. Const., art. IV, sec. 1(5) (1968); art. XI, sec. 2 (1906, 1910). The Oregon Supreme Court has said that the amendments constitute a "continuous offer" of "all powers properly belonging to municipal government" (*Robertson vs. City of Portland*, 77 Or. 121, 127, 149 P. 545 (1915)). The offer is conditional; the voters of a city meet the condition (accept the offer) by adopting appropriate charter terms. The general grant of power in this section accepts the offer comprehensively. Many Oregon statutes grant powers to cities, as do some Federal statutes. Occasionally a statute says that a city may take certain action if its charter authorizes it to do so. The voters of the city may in that case meet the condition by adopting appropriate charter terms. The general grant in this Section is intended to meet that condition.
5. The U.S. Constitution does not mention local government, but it allows cities a wide range of action. The Oregon Constitution, while imposing some restrictions on local government, also allows cities a wide range of action. Federal and state statutes impose many restrictions and requirements on cities, but they also allow cities a wide range of action. "Allow" in this section is intended to emphasize that, even though a city cannot identify a statute as the basis for a power that the city exercises, it

may exercise that power if the power "properly belong(s) to a municipal government" (supra note 12) and is permissible under federal and state law.

6. This sentence negates a traditional rule of construction expressed by the Latin maxim "Inclusio (expressio) unius est exclusio alterius" (the inclusion or expression of one is the exclusion of the other). This rule has been applied many times to lists of specific charter powers, with the result that many powers not listed have been held not available for municipal exercise.
7. For more than a century, city charters usually have been subject to a rule of strict construction known as Dillon's Rule:
It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, not indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied, (1 Dillon, Municipal Corporations, sec. 237 at 448-50, 5th ed. (1911), cited in Burt v. Blumenauer, 299 Or. 55, 59, 699 P.2d 168 (1985).) [Emphasis in original.]

The requirement that the charter be liberally construed is intended to make Dillon's Rule inapplicable to this charter.
8. A local governmental power sometimes is regarded as exhausted once it has been used. This sentence is intended to negate that construction unless it is clearly proper.
9. In normal circumstance the council consists of the mayor and 6 councilors however, when there is a vacancy in one of the positions the council consists of those positions not vacant i.e., the mayor and five councilors when there is a council position vacant.
- 10.

Under section 7, supra, the majority must be of the membership of the council at the time of the action authorized by this section. If the membership is temporarily diminished by one or more unfilled vacancies, the majority is of the temporarily diminished membership. However, action by a mere majority of a quorum (e.g., three votes when a quorum of four is present) would not suffice to take action under this section.

11. Offices that are inherently incompatible with each other should not be combined. A city attorney who has prosecutorial functions should not, for example, be made municipal judge of the city for which the attorney is prosecutor.

Note that this section relates only to city offices. If the city has a council-manager form of government, section 21a(6)(g) vests in the city manager the power to combine city positions and to otherwise reorganize them.
12. If the city has the council-manager form of government, and this section provides for appointive officers other than the manager (such as the city attorney), the council could use the option provided it by this exception to delegate to the city manager the power to appoint such officers.
13. The majority prescribed here is a number more than half the number of council members at whatever time determination of the existence of a quorum is needed. For a seven-member council, for example, a quorum is four or more. If the council has one unfilled vacancy, the quorum is the same. If, however, the council has two unfilled vacancies, the quorum is three, as is normal for a five-member council. If, through resignations or other contingencies, occupied council positions are reduced to two or one, the quorum is two or one, respectively.
14. Under this or similar charter provisions without this exception, the questions has occasionally arisen whether the council president has two votes on a question before the council—one as mayor and one as presiding councilor when acting as mayor. The exception is intended to prevent such dual voting.
15. Under the main clause in this section, the council may act affirmatively through fewer than a majority of its members. A seven-member council may so act through three members, its quorum being four; a five-member council may so act through two members, its quorum being three.

However, a question may be decided negatively by fewer members than would be required to decide it affirmatively. This can happen, for example, upon a 2 to 2 vote when four members constitute a quorum; or upon a 2 to 1 vote when four members constitute a quorum and one member present abstains.

The section is based on the assumption that it is not necessary to require every council member to vote on every issue that comes before the council while the member is present. The charter may, of course, make voting compulsory in every such situation. If abstention from voting is regarded as generally inadvisable, even though legally permissible, its incidence probably can be minimized by a charter requirement that the abstainer explain the abstention when it takes place.

16. "Adjudicated incompetence" means inability or unfitness to manage one's affairs because of mental condition formally determined in a legal proceeding by a court of competent jurisdiction.
17. Section 23, infra, specifies that qualifications of members of the council are residence in the city and status as a qualified voter. Under subsections (2)(c) and (2)(d) of this section, moving outside city limits or allowing voter registration to lapse would permit the council to declare a member's office vacant.
18. Normally a single vacancy is filled at one time. The requirement of this section is sufficiently flexible, however, to allow the council's membership to be completed by appointment in a situation of simultaneous multiple vacancies so long as a single member of the council remains.
19. A disability under this provision is usually temporary. If the disability is permanent, it usually leads to resignation by the disabled member. If a permanently disabled member does not resign, the member's council office does not become vacant because of the disability. However, the other council members may make an appointment pro tem to alleviate the disability, and the appointment may continue until a successor to the disabled member is elected to succeed the member. Permanent disability, moreover, normally leads to an absence under section 19, supra. If these

methods of dealing with permanent disability are not sufficient, such disability may be added to the list of causes of vacancies under section 19, supra.

Whether a council member's condition amounts to disability under this section is a question of fact answerable by the member alone or in consultation with others. A dispute about the question can be resolved by appropriate judicial proceedings or, if the charter so provides, by the council. The power of the council under section 23(4), infra, to judge the qualifications of its members does not imply that the question of disability is ultimately one for the council to answer, because "qualifications" in that subsection means legal, not physical or psychological, qualifications. Consistently with that subsection, however, this sentence regarding disability may be expanded to make the council the judge of disability of its members and to authorize the council to declare a council office vacant in the event of permanent disability of its incumbent.

20. It is the intent of this section to require the city manager to live within the boundaries of the city unless permission is obtained from a majority of the council to do otherwise.
21. The requirements of this subsection do not prevent a council member, outside of council meetings, from obtaining from the manager, or other city personnel, information to which a private citizen is entitled. Under ORS 192.420, "Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500." (The latter section states more than two pages of exceptions.)
22. An elective officer is normally elected by popular vote. The officer, however, may be an appointee to fill a vacancy in an elective office.
23. Under Or. Const., art. II, sec. 2 (1974), a person is a qualified elector if (1) a citizen of the United States, (2) at least 18 years of age, (3) a resident of the state for six months immediately before voting, and (4) registered under state law to vote.
24. This prohibition states in a somewhat qualified manner the general rule against holding incompatible offices (i.e., against holding simultaneously two offices, one of which is subordinate to the other). *State v. Hoyt*, 2 Or. 246 (1867); 3 McQuillin, *Municipal Corporations*, sec. 12.67, 3d ed. rev.

(1982). The prohibition bars a full-time employee, and in most cases a part-time employee, from serving as mayor or councilor. However, it does permit the mayor or a councilor to serve as a volunteer firefighter and to receive the nominal compensation usually provided for such service.

The prohibition is intended to prevent certain conflicts of interest in city service. Recent years have seen much legislation and litigation regarding conflicts of interest on the part of public officers, partly because strict adherence to rules against conflict of interest have posed special problems in some small cities and partly because certain city officers have increasingly become involved in quasi-judicial proceedings where the rules have taken on new rigor.

25. This section does not apply to ordinances that voters of the city propose and adopt by the initiative.
26. Legislation cannot take effect so long as it is subject to the referendum. Or. Const., art. IV, sec. 1(3)(a), art. IV, sec. 28; *Sears v. Multnomah County*, 49 Or. 42, 88 P. 522 (1907); *Long v. City of Portland*, 53 Or. 92, 98 P 324, 98 P. 1111 (1909). City legislation adopted to meet an emergency is not subject to the referendum and therefore may take effect immediately. See Or. Const., art. IV, sec. 1(5). The prohibition of emergency clauses on state and county tax laws apparently does not apply to cities. Cf. Or. Const., art. IX, sec. 1a, and *Multnomah County v. Mittleman*, 275 Or. 545, 552 P.2d 242 (1976), with 38 Or. Op. Att'y Gen. 387, 403 (1976), and 42 Or. Op. Att'y Gen. 277, 282 (1982).

A legislative declaration of an emergency to which legislation is addressed is not subject to judicial challenge; "legislative findings on the necessity for emergency acts are conclusive on the courts." This rule applies to municipal legislation. *Greenberg v. Lee*, 196 Or. 156, 248 P.2d 324 (1952).

The statutory requirement in ORS 221.310 that an emergency measure be approved by three-fourths of the council and by the mayor applies only to a city that does not prescribe a contrary rule. Sections 30 and 31 permit adoption of ordinances by the council (i.e., a majority of a quorum), and there is no exception for emergency ordinances. These sections thus constitute a "conflicting provision" for the purpose of ORS 221.310.

27. State law generally limits the bonded debt of a city to "three percent of the true cash value of all taxable property" in the city "computed in accordance with ORS 308.207." ORS 287.004(2). The limitation does not apply "to bonds issued for water, sanitary or storm sewers, sewage disposal plants, hospitals, infirmaries, gas, power or lighting purposes, or...any off-street motor vehicle parking facility, nor to [so-called Bancroft] bonds issued pursuant to applications to pay assessments for improvements in installments." ORS 287.004(4). Bancroft bonds may not "exceed .03 of the latest true cash valuation of the city." ORS 223.295(1). "[W]arrants or short-term promissory notes" issued for certain purposes may "at no time exceed in the aggregate 80 percent of the ad valorem taxes upon real and personal property theretofore certified to the county assessor for levy...for the tax year in which the warrants or notes are issued, and 80 percent of other budgeted and unpledged revenues which the governing body...estimates will be received from other sources during said tax year." ORS 287.442(2).b.

TITLE 1 - ADMINISTRATIVE

CHAPTER 1 - OFFICIAL CITY CODE

1-1-1: - TITLE:

Upon adoption by the City Council, this City Code is hereby declared to be and shall hereafter constitute the official City Code of the City of John Day. This City Code of ordinances shall be known and cited as the JOHN DAY CITY CODE, and it is hereby published by authority of the Council and shall be kept up to date as provided in Section 1-1-3. Any reference to the number of any section contained herein shall be understood to refer to the position of the same number, its appropriate chapter and title heading, and to the general penalty clause, relating thereto, as well as to the section itself, when reference is made to this City Code by title in any legal documents.

1-1-2: - ACCEPTANCE:

The City Code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in all administrative tribunals of this State as the ordinances of the City of general and permanent effect, except the excluded ordinances enumerated in Section 1-2-1 of this Code.

1-1-3: - AMENDMENTS:

Any ordinance amending the City Code shall set forth the title, chapter and section number of the section or sections to be amended, and this shall constitute sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this City Code. All such amendments or revisions by ordinance shall be immediately forwarded to the codifiers and the said ordinance material shall be prepared for insertion in its proper place in each copy of this City Code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the City Code.

1-1-4: - CODE ALTERATION:

It shall be deemed unlawful for any person to alter, change, replace or deface in any way any section or any page of this City Code in such a manner that the meaning of any phrase or order may be changed or omitted. Replacement pages may be inserted according to the official instructions when so authorized by the City Council. The City Recorder shall see that the replacement pages are properly inserted in the official copies maintained in the office of the City Recorder. Any person having in his custody an official copy of the City Code shall make every effort to maintain said Code in an up to date and efficient manner. He shall see to the immediate insertion of new or replacement pages when such are delivered to him or made available to him through the office of the City Recorder. Said Code books, while in actual possession of officials and other interested persons, shall be and remain the property of the City and shall be returned to the office of the City Recorder when directed so to do by order of the City Council.

(1981 Code)

CHAPTER 2 - SAVING CLAUSE

1-2-1: - REPEAL OF GENERAL ORDINANCES:

All general ordinances of the City passed prior to the adoption of this City Code are hereby repealed, except such as are included in this City Code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporation contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections, not expressly or by implication superseded by this Code; ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

1-2-2: - PUBLIC UTILITY ORDINANCES:

No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this City Code or by virtue of the preceding Section, excepting as this City Code may contain provisions for such matters, in which case this City Code shall be considered as amending such ordinance or ordinances in respect to such provisions only.

1-2-3: - COURT PROCEEDINGS:

No new ordinance shall be construed or held to repeal a former ordinance whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable, if any penalty, forfeiture or punishment be mitigated by any provision of a new ordinance, such provision may be, by consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

Nothing contained in this Chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the City herein repealed and the provisions of all general ordinances contained in this Code shall be deemed to be continuing provisions and not a new enactment of the same provision; nor shall this Chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the City under any ordinance or provision thereof in force at the time of the adoption of this City Code.

1-2-4: - SEVERABILITY CLAUSE:

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this City Code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Code, or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

(1981 Code)

CHAPTER 3 - DEFINITIONS

1-3-1: - CONSTRUCTION OF WORDS:

Whenever any word in any section of this City Code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used.

When any subject matter, party or person is referred to in this City Code by words importing the singular number only, or the masculine gender, several matters, parties or persons and females as well as males and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of this City Code which contains any express provision excluding such construction or where the subject matter or context may be repugnant thereto.

The word "ordinance" contained in the ordinances of the City has been changed in the content of this City Code to "Title," "Chapter," "Section" and/or "subsection" or words of like import for organizational and clarification purposes only. Such change to the City's ordinances is not meant to amend passage and effective dates of such original ordinances.

1-3-2: - DEFINITIONS, GENERAL:

Whenever the following words or terms are used in this Code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

AGENT: The word "agent" as used in this Code shall mean a person acting on behalf of another.

CITY: The word "City" as used in this Code shall mean the City of John Day, County of Grant, State of Oregon.

EMPLOYEES: Whenever reference is made in this Code to a City employee by title only, this shall be construed as though followed by the words "of the City of John Day."

FEE: The word "fee" as used in this Code shall mean a sum of money charged by the City for the carrying on of a business, profession or occupation.

LICENSE: The word "license" as used in this Code shall mean the permission granted for the carrying on of a business, profession or occupation.

MISDEMEANOR: The word "misdemeanor" shall mean any offense so designated in any Statute of this State, or in any provision of this Code, or if the person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year.

NUISANCE: The word "nuisance" shall mean anything offensive or obnoxious to the health and welfare of the inhabitants of the City; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community. ^[1]

OCCUPANT: The word "occupant" applied to a building or land shall include any person who occupies the whole or any part of such building or land whether alone or with others.

OFFENSE: The word "offense" shall mean any act forbidden by any provision of this Code or the omission of any act required by the provisions of this Code. ^[2]

OFFICERS: Whenever reference is made in this Code to a City officer by title only, this shall be

construed as though followed by the words "of the City of John Day."

OPERATOR: The word "operator" as used in this Code shall mean the person who is in charge of any operation, business or profession.

OWNER: The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

PERSON: The word "person" shall mean any public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, as well as a natural person.

PERSONAL PROPERTY: The term "personal property" shall include every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.

RETAILER: The word "retailer" as used in this Code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things in small quantities direct to the consumer.

RIGHT OF WAY: The term "right of way" shall mean the privilege of the immediate use of the roadway or other property.

STREET: The word "street" shall include alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.

TENANT: The word "tenant" applied to a building or land shall include any person who occupies the whole or any part of such buildings or land whether alone or with others.

WHOLESALE: The word "wholesaler" and "wholesale dealer" as used in this Code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things in quantity to persons who purchase for the purpose of resale.

WRITTEN, IN WRITING: The words "written" or "in writing" may include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond required by law, it shall be in the proper handwriting of such person, or in case he is unable to write, by his proper mark.

1-3-3: - CATCHLINES:

The catchlines of the several sections of the City Code are intended as mere catchwords to indicate the content of the section and shall not be deemed or taken to be titles of such sections, nor be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division or section hereof, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

(1981 Code)

CHAPTER 4 - GENERAL PENALTY

1-4-1: - GENERAL PENALTY:

Any person convicted of violation of any section or provision of this City Code, where no other penalty is set forth, shall be punished by a fine not to exceed \$500.00 for any one offense, or by imprisonment in the City or County jail for a period of not more than six months or by both such fine and imprisonment. ^[3]

1-4-2: - APPLICATION OF PROVISIONS:

- A. The penalty provided in this Chapter shall be applicable to every section of this City Code the same as though it were a part of each and every separate section unless otherwise indicated. Any person convicted of a violation of any section of this City Code where a duty is prescribed or obligation imposed, or where any action which is of a continuing nature is forbidden or is declared to be unlawful, shall be deemed guilty of a misdemeanor. A separate offense shall be deemed committed upon each day such duty or obligation remains unperformed or such act continues, unless otherwise specifically provided in this City Code.
- B. In all cases where the same offense is made punishable or is created by different clauses or sections of this City Code, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.
- C.

Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this City Code and there shall be no fine or penalty specifically declared for such breach, the provisions of this Chapter shall apply.

(1981 Code)

1-4-3: - LIABILITY OF OFFICERS:

No provision of this City Code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intent of the Council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty. ^[4]

(1981 Code)

CHAPTER 5 - MAYOR AND COUNCIL

1-5-1: - MEETINGS:^[5]

- A. Regular Meetings: The Council shall meet in regular session on the second and fourth Tuesdays of each month in the Council chambers at the time set by the Council. A meeting may be canceled with the concurrence of a majority of the Council, but in no event shall there be less than one meeting per month.
- B. Special Meetings: Special meetings may be called by the Mayor, the City Manager, by two Councilors or by announcement during any regular meeting. The call for a special meeting shall specify the time and place and shall list one or more of the subjects to be considered. No special meeting shall be held until at least 24 hours after the call is issued, except in case of actual emergency.
- C. Adjournment: Any meeting may be adjourned to a time, place and date certain, but not beyond the next regular meeting.
- D. Quorum: A majority of the Council shall constitute a quorum for its business. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time.
- E. Compelling Attendance: The Council may adjourn from time to time to compel the attendance of absent members.
- F. Executive Session: Executive sessions may be held in accordance with the provisions

of the State law.

- G. Attendance of Media at Council Meetings: Except as provided by State law all meetings of the City Council and its committees shall be open to the media, freely subject to recording by tape, radio, television and photographic services at any time; provided, that such arrangements do not interfere with the orderly conduct of the meetings as determined by the presiding officer.
- H. Open Meetings: All meetings, other than executive sessions, shall be open to the public.

(Ord. 94-76-2, 4-26-94)

1-5-2: - ORDER OF BUSINESS:

The order of business at each Council meeting shall be in accordance with the agenda prepared by the City Manager.

- A. Placing Items on Agenda Generally: Any person wishing to place an item on the agenda shall advise the Manager's office no later than 1:00 p.m. on the Wednesday preceding the meeting at which the person wishes the item to be considered.
- B. Items to be Acted on Generally: Normally, only those items on the agenda shall be acted upon by the Council. Matters deemed to be emergencies or of an urgent nature by the Mayor, a Councilmember, or the Manager may be submitted for Council consideration and action.
- C. New Business: The Mayor or a Councilmember may bring before the Council any new business under the "other business" portion of the agenda. These matters need not be specifically listed on the agenda, but formal action on the matters shall be deferred until a subsequent Council meeting unless deemed urgent.
- D. Journal of Proceedings: An account of all proceedings of the Council shall be kept under the direction of the City Manager and the minutes, upon approval, shall constitute the official record of the Council under the care of the City Recorder. Minutes are approved upon the signature of the Mayor and attested to by the person preparing them.
- E.

Reading of Minutes: Unless the reading of the minutes of the previous Council meeting is requested by a majority of the Council, the minutes may be approved without reading if copies have been previously furnished by each of the Councilmembers.

F. Committees:

1. Standing Committees: The following standing committees shall be appointed by the Mayor at the beginning of each odd numbered year. Each committee shall consist of two members selected from the City Council. The committees shall be:
 - a. Public Safety.
 - b. Public Works.
 - c. Human Services.
 - d. Administration.
2. Citizen Committees: The Council may create temporary committees to assist in the conduct of the operation of the City government with such duties as the Council may specify not inconsistent with the City Charter or City Code.
3. Membership and Selections: Membership and selection of members shall be as provided by the Council. Any committee so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the Council. No committee so appointed shall have powers other than advisory to the Council or to the City Manager and shall conduct their meetings in accordance with State law.

G. Robert's Rules of Order: "Robert's Rules of Order Revised" shall be used as the guideline for conduct of Council meetings, except in those cases where specific provisions contrary to Robert's Rules are provided in this Chapter.

(Ord. 94-76-2, 4-26-94)

1-5-3: - PRESIDING OFFICER AND DUTIES:

- A. Presiding Officer: The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the President of the Council shall preside. In the absence of both the Mayor and the President, the Council shall elect a presiding officer.

- B. Preservation of Order: The presiding officer shall preserve order and decorum, prevent attacks on personalities or the impugning of members' motives and confine members in debate to the question under discussion.
- C. Points of Order: The presiding officer shall determine all points of order, subject to the right of any member to appeal to the Council. If any appeal is taken, the question shall be, "Shall the decision of the Mayor (presiding officer) be sustained?"
- D. Questions to be Stated: The presiding officer shall state all questions submitted for a vote and announce the result. A roll call vote shall be taken upon the request of any member.
- E. Signing of Resolutions, Agreements and Contracts: The Mayor, or President of the Council when acting as presiding officer, shall sign all resolutions, agreements and contracts approved or adopted by the Council at the meeting at which the action was taken.
- F. Designation of Hearings Officer to Conduct Special Public Hearings: A hearings officer may be designated by the presiding officer to conduct special public hearings, when appropriate.

(Ord. 94-76-2, 4-26-94)

1-5-4: - COUNCIL ROLE:

- A. Speaking by Councilmembers Generally: Every Councilmember desiring to speak shall address the chair and, upon recognition by the presiding officer, shall confine the remarks to the question under debate.
- B. Questioning of Administrative Staff by Councilmembers: Every Councilmember desiring to question the administrative staff shall address the questions to the Manager who shall be entitled to either answer the inquiry or designate a staff member to do so.
- C. Administrative Staff and City Employees Addressing Council or Public: Members of the City's administrative staff and other City employees desiring to address the Council or members of the public shall first be recognized by the chair and shall address such remarks to the chair. The staff may respond to questions or comments by the Council or members of the public with permission of the chair, but shall always do so in a polite, tactful manner.
- D.

Voting: Every member shall vote when a question is taken, unless the Council excuses the member for a special reason; but no member shall be permitted to vote on any subject in which he has a direct pecuniary interest. Two members may demand the ayes and nays on any question. If not otherwise controlled by Charter provision, the concurrence of a majority of the members of the Council present at a Council meeting shall be necessary to decide any question before the Council.

- E. Reconsideration of Actions Taken: Any member who voted with the majority may move for a reconsideration of an action at the same or the next following regular meeting. Once a matter has been reconsidered, no motion for further reconsideration thereof shall be made without unanimous consent of the Council.
- F. Expressing and Recording Dissents or Protests: Any member of the Council shall have the right to express dissent from or to protest any action of the Council immediately following the vote on the action and to have the reason entered in the minutes.

(Ord. 94-76-2, 4-26-94)

1-5-5: - PUBLIC MEMBERS ADDRESSING THE COUNCIL:

- A. Any public member desiring to address the Council shall stand and wait to be recognized by the presiding officer. After recognition, the person's name and address shall be stated for the record and the remarks shall be limited to the question under discussion. All remarks and questions shall be addressed to the presiding officer and not to any individual Councilmember, staff member or other person. No person shall enter into any discussion without being recognized by the presiding officer.
- B. Any public member addressing the Council shall be limited to five minutes unless further time is granted by the presiding officer. No public member shall be allowed to speak more than once upon any one subject until every other public member choosing to speak thereon has spoken.
- C. After a motion has been made or after a public hearing has been closed, no public member shall address the Council without first securing permission from the majority of the Council.

(Ord. 94-76-2, 4-26-94)

1-5-6: - PASSAGE OF RESOLUTIONS:

Each resolution shall be read only once before being voted on, and that reading may be by title only unless any member of the Council requests the resolution be read in full. A resolution is effective immediately upon passage.

(Ord. 94-76-2, 4-26-94)

1-5-7: - AMENDMENT AND ADOPTION OF COUNCIL RULES:

- A. Adoption and Amendment: The rules set out herein, shall be adopted by resolution; and may be amended, or repealed by resolution; by a majority vote of all members of the Council; provided that new rules or proposed amendments of new rules shall have been introduced into the record at a prior Council meeting.
- B. Suspension of Rules: Any provision of the rules set out herein, not governed by the City Charter or City Code may be temporarily suspended by a vote of a majority of the Council. The vote on such suspension shall be taken by ayes and nays and entered upon the record.

(Ord. 94-76-2, 4-26-94)

CHAPTER 6 - CITY PERSONNEL REGULATIONS

1-6-1: - TITLE:

The title of this Chapter shall be "The Personnel Ordinance of the City of John Day."

1-6-2: - PURPOSE:

This Chapter is adopted to establish an equitable and uniform procedure for dealing with personnel matters; to attract to Municipal service and to retain the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness; and to provide a reasonable degree of job security for qualified employees.

1-6-3: - ADOPTION AND AMENDMENT OF RULES:

Personnel rules shall be adopted and amended by written resolution of the Council. The rules shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe benefits, and discipline, discharge, and other related activities. All hiring, appointments and promotions shall be made in accordance with the personnel rules and shall be based on merit and fitness; and the City will not discriminate against an individual on the basis of physical or mental handicap, sex, race, color, age, religion, national origin, marital status, family relationships or political affiliation in accordance with pertinent Federal and State laws.

1-6-4: - ADMINISTRATION OF THE RULES:

The City Administrator shall be responsible for:

- A. Administering all the provisions of this Chapter and of the personnel rules not specifically reserved to the Council.
- B. Preparing or causing to be prepared and recommending to the Council personnel rules and revisions and amendments to such rules.

(Ord. 79-9, 6-26-79)

CHAPTER 8 - PUBLIC IMPROVEMENTS, ASSESSMENT PROCEDURE

1-8-1: - INITIATIVE OF PROCEEDINGS AND REPORT FROM CITY ENGINEER:

Whenever the Council shall deem it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, sewer, sidewalk, drain or other public improvement ^[2] to be paid for in whole or in part by special assessment according to benefits, then the Council shall, by motion, direct the City Engineer or such other person therein designated by the City Council to make a survey and written report for such project and file the same with the City Recorder. Unless the Council shall direct otherwise, such report shall contain the following matters:

- A.

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

- B. Plans, specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the Engineer may adopt the plans, specifications and estimates of such agency.
- C. An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto.
- D. An estimate of the unit cost of the improvement to the specially benefited properties.
- E. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited.
- F. The description and assessed value of each lot, parcel of land or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof.
- G. A statement of outstanding assessments against property to be assessed.

1-8-2: - COUNCIL'S ACTION ON ENGINEER'S REPORT:

After the City Engineer's report or the report of such other person designated by the City Council shall have been filed with the City Recorder, the Council may thereafter by motion approve the report, modify the report and approve it as modified, or require the Engineer or such other person to supply additional or different information for such improvement, or it may abandon the improvement.

1-8-3: - RESOLUTION AND NOTICE OF HEARING:

After the Council shall have approved the Engineer's report or the report of such other person designated by the City Council as submitted or modified, the Council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement and shall direct the Recorder to give notice of such improvement by two

publications one week apart in a newspaper of general circulation within the City, and by mailing copies of such notice by registered or certified mail to the owners to be assessed for the costs of such improvement, which said notice shall contain the following matters:

- A. That the report of the City Engineer or the report of such other person designated by the City Council is on file in the office of the Recorder and is subject to public examination.
- B. That the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the Council; and that if prior to such hearing there shall be presented to the Recorder valid, written remonstrances of the owners of three-fourths of the frontage of the property to be specially affected by such improvement, then the improvement will be abandoned for at least six months.
- C. A description of the property to be specially benefited by the improvement, the owners of such property and the Engineer's estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties.
- D. Notwithstanding the above provisions of this Section, the Council may, if it finds that the proposed improvement is necessary for the preservation of the health, welfare or safety of the City or the area thereof to be served by the proposed improvement, by resolution direct that the proposed improvement be constructed without notice and without public hearing on the proposed improvement as would otherwise be given and held under the above provisions of this Section.

1-8-4: - MANNER OF DOING WORK:

The Council may provide in the improvement resolution that the construction work may be done in whole, or in part, by the City, by a contractor or by any other governmental agency, or by any combination thereof.

1-8-5: - COUNCIL DECISION, CARRY OUT OR ABANDON IMPROVEMENT:

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

1-8-6: - CALL FOR BIDS:

The Council may, in its discretion, direct the City Recorder to advertise for bids for construction of all or any part of the improvement project on the basis of the Council-approved report of the Engineer or other designated person, and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or after the passage of the resolution if no notice is given or public hearing held, or at any time after said public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement, unless the resolution is adopted pursuant to Section 1-8-3D of this Chapter. In the event that any part of the work of the improvement is to be done under contract bids, then the Council shall determine the time and manner of advertisement for bids; and the contracts shall be let to the lowest responsible bidder; provided, that the Council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The City shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the City.

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

1-8-7: - ASSESSMENT ORDINANCE:

If the Council determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award or City departmental cost, or after the work is done and the cost thereof has been actually determined, the Council shall determine whether the property benefited shall bear all or a portion of the cost. The Recorder or other

person designated by the Council shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate City office. Notice of such proposed assessment shall be mailed or personally delivered to the owner of such lot proposed to be assessed, which notice shall state the amounts of assessment proposed on that property and shall fix a date by which time objections shall be filed with the Recorder. Any such objection shall state the grounds thereof. The Council shall consider such objections and may adopt, correct, modify or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.

1-8-8: - METHOD OF ASSESSMENT, FINANCING:^[8]

The 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 any improvement district consistent with the benefits derived.
- B. Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.
- C. Authorize payment by the City of all, or any part of, the cost of any such improvement, when in the opinion of the Council the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement.

Nothing contained in this Chapter shall preclude the Council from using any other available means of financing improvements, including Federal or State grants in aid, sewer charges or fees, revenue bonds, general obligation bonds or any other legal means of finance. In the event that such other means of financing improvements are used, the Council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

1-8-9: - NOTICE OF ASSESSMENT:

Within ten days after the ordinance levying assessments has been passed, the City Recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property, and shall publish notice of such assessment twice in a newspaper of general circulation

in the City, the first publication of which shall be made not later than ten days after the date of the assessment notice. The notice of assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the date of the first publication of notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure; and that said notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment.

(Ord. 69-4, 11-19-69)

1-8-10: - LIEN RECORDS AND FORECLOSURE PROCEEDINGS:

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the Docket of City Liens a statement of the amounts assessed upon each particular lot, parcel of land or portion thereof, together with a description of the improvement, the name of the owners and the date of the assessment ordinance. Upon such entry in the Lien Docket, the amounts so entered shall become a lien and charge upon the respective lots, parcels of land or portions thereof, which have been assessed for such improvement. All assessment liens of the City shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the State of Oregon permit. ¹⁹¹ Interest shall be charged at the rate of ten percent per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance, the City may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the State of Oregon; provided, however, that the City may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the State of Oregon to redeem such property.

(Ord. 69-4, 11-19-69; amd. 1981 Code)

1-8-11: - ERRORS IN ASSESSMENT CALCULATIONS:

Claimed errors in the calculation of assessments shall be called to the attention of the City Recorder, who shall determine whether there has been an error in fact. If the Recorder shall find that there has been an error in fact, he shall recommend to the City Council an amendment to the

assessment ordinance to correct such error, and upon enactment of such amendment, the City Recorder shall make the necessary correction in the Docket of City Liens and send a correct notice of assessment by registered or certified mail.

1-8-12: - DEFICIT ASSESSMENT:

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the Council may, by motion, declare such deficit and prepare a proposed deficit assessment. The Council shall set a time for a hearing of objections to such deficit assessment and shall direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the City. After such hearing the Council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the Docket of City Liens as provided by this Chapter, and notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with Sections 1-8-9 and 1-8-10 of this Chapter.

1-8-13: - REBATES:

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

1-8-14: - ABANDONMENT OF PROCEEDINGS:

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this Chapter at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be cancelled, and any payments made on such assessment shall be refunded to the person paying the same, his assigns or legal representatives.

1-8-15: - CURATIVE PROVISIONS:

No improvement assessment shall be rendered invalid by reason of a failure of the Engineer's report or the report of such other person designated by the City Council to contain all of the information required by Section 1-8-1 hereof, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the Lien Docket or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the owner of any property as required by this Chapter, or by reason of any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

1-8-16: - REASSESSMENT:

Whenever any assessment, deficit or reassessment for any improvement which has been made by the City has been, or shall be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this State, or any Federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the State of Oregon. ^[10]

(Ord. No. 69-4, 11-19-69)

CHAPTER 9 - CITY ELECTIONS

1-9-1: - CALLING OF SPECIAL ELECTIONS:

- A. The City Council by motion may provide for the calling of special elections within the City at such times and for such purposes as may be decided by the City Council by motion.
- B. Upon motion being passed for the calling of any special election within the City, notice shall be given of such special election by publishing notice of such election one time not less than ten days prior to the date of such election in a newspaper of general circulation within the City.
- C.

The notice so published shall be in the form of a facsimile ballot of the matters to be decided at such election. The contents of the ballot for such elections shall be approved by the Council by motion prior to the giving of such notice of election.

(Ord. No. 75-3, 5-29-75)

1-9-2: - NOMINATING PROCEDURES FOR ELECTION OF CITY OFFICERS:

- A. Eligibility for Nomination for Elective Office: Eligibility shall be as stated in the City Charter. ^[11]
- B. Nomination: City officers shall be nominated by the same procedures as provided in State election laws for nomination candidates for nonpartisan offices except as provided in this Chapter.
- C. Fee for Declaration of Candidacy: The fee for declarations of candidacy for City office shall be \$50.00 if a nominating petition is not used.
- D. Nomination by Petition: Nominating petitions shall contain at least 25 signatures of qualified electors residing in the City that are registered to vote.
- E. Time for Filing: All nomination papers comprising a petition shall be assembled and filed with the City and recorded as one instrument not later than ten working days before the last day available for filing for the election with the County. The City Recorder will post notice of the date for filing nomination petitions with the City at least 20 days prior to the filing date. The Recorder shall make a record of the exact time at which each petition is filed and shall take and preserve the name, residence and mailing address of the person by whom it is filed.
- F. Deficient Petitions—Correction—Refiling: If the petition is not signed by the required number of qualified electors, the Recorder shall notify the candidate and the person who filed the petition within five days after the filing. If the petition is insufficient in any other particular, the Recorder shall return it immediately to the person who filed it, certifying in writing wherein the petition is insufficient. Such deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed within the regular time for filing nomination petitions.
- G. Preservation of Successful Candidate's Petition: The petition of nomination for a successful candidate at an election shall be preserved in the office of the Recorder until the term of office for which the candidate is elected expires.

(Ord. No. 94-79-5, 6-14-94)

CHAPTER 10 - INITIATIVE AND REFERENDUM

1-10-1: - FORMS OF PETITIONS:

- A. Ordinance or Amendment to Charter, Initiative: The following shall be substantially the form of a petition for any ordinance or amendment to the Charter proposed by the initiative:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter. ^[12]

INITIATIVE PETITION

To the Honorable, _____
Recorder for the City of John Day,
Grant County, Oregon.

We, the undersigned, citizens and legal voters of the City of John Day, Grant County, Oregon, respectfully demand that the following proposed ordinance (or amendment to the City Charter) shall be submitted to the legal voters of the City of John Day, Grant County, Oregon, for their approval or rejection at the regular (or special election to be held on the _____ day of _____, 19_____, and each for himself says: I have personally signed this petition; I am a legal voter of the City of John Day, Grant County, Oregon, and my residence and street number are correctly written after my name.

Name	Residence	Street Number
<div style="text-align: center;">_____</div> <div style="text-align: center;">(Here follow 20 numbered lines for signatures.)</div>		

B. Referendum: The following shall be substantially the form of petition for referendum to the people on any ordinance passed by the City Common Council:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any other name than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter.

REFERENDUM PETITION

To the Honorable _____
Recorder for the City of John Day,
Grant County, Oregon.

We, the undersigned, legal voters of the City of John Day, Grant County, Oregon, respectfully demand that Ordinance No. _____ entitled (the title of ordinance on which the referendum is sought), passed by the Common Council of the City of John Day at its meeting on the _____ day of _____ 19_____, shall be submitted to the legal voters of the City of John Day, Oregon, for their approval or rejection at the regular (or special) election to be held on the _____ day of _____, 19_____, and each for himself says: I have personally signed this petition; I am a legal voter of the City of John Day, Grant County, Oregon, and my residence and street number are correctly written after my name.

Name	Residence	Street Number
<div style="text-align: center;">_____ (Here follow 20 numbered lines for signatures.)</div>		

1-10-2: - VERIFICATION OF SIGNATURES:

Each and every sheet of every petition for either initiative or referendum containing signatures shall be verified on the back thereof in substantially the following form by the person who circulated such sheet of said petition by affidavit thereon as follows:

State of Oregon)
County of Grant) ss.
City of John Day)

I, _____, being first duly sworn, say that every person who signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, residence and street number correctly and that each signer is a legal voter of the City of John Day.

(Signature and title of officer and his residence)

1-10-3: - FORMS NOT MANDATORY:

The forms herein given are not mandatory and if substantially followed in any petition it shall be sufficient, disregarding clerical and technical errors.

1-10-4: - TITLE AND TEXT OF PETITION:

Not more than 20 signatures shall be signed to one sheet of a petition, and a full and correct copy of the title and text of the measure demanded for submission by the initiative or referendum petition, as the case may be, shall be attached to each sheet circulated for signature, and such full and correct copy of the title and text shall be shown to the voter before his signature is attached.

1-10-5: - PETITION FILED WITH RECORDER:

The Recorder of the City shall accept for filing any petition for the initiative or for the referendum, subject to the verification of the number and genuineness of the signatures and voting qualifications of the persons signing the same by reference to the registration books in the office of the County Clerk of Grant County, Oregon, and if a sufficient number of qualified voters be found to have signed said petition, he shall file same within ten days after presentation thereof to him.

1-10-6: - NUMBER OF SIGNATURES REQUIRED:

Initiative petitions for any proposed ordinance, Charter amendment or measure shall be signed by a number of legal voters equal to 15 percent of the votes cast for Mayor at the last preceding Municipal election. Referendum petitions against any ordinance or measure proposed by the City Common Council shall be signed by a number of legal voters equal to ten percent of the greatest number of votes cast for Councilman at the last regular preceding Municipal election.

(Ord. No. 211, 12-11-56)

1-10-7: - CHARTER AMENDMENT PROPOSAL:

A. Submission to Voters: An amendment to the Charter of the City, or a new Charter, may be proposed and submitted to the legal voters thereof by resolution or ordinance adopted by the City Council without an initiative petition; said resolution or ordinance shall be adopted and filed with the Recorder for submission not later than ten days before the election at which it is to be voted upon, and no amendment to the Charter shall be effective until it is approved by a majority of the votes cast thereon by the legal voters of the City.

B.

Resolution or Ordinance Statements: Where an amendment to the Charter of the City, or a new Charter, may be proposed and submitted to the legal voters thereof by resolution or ordinance of the City Council without an initiative petition, the said resolution or ordinance shall therein:

1. State the date of the regular Municipal election or the date of a special election at which said Charter amendment or new Charter will be submitted to be voted on;
2. If the same be a Charter amendment, state a full and complete draft of such amendment;
3. Call and make provision for such election;
4. Provide for the ballot title to be prepared by the City Attorney; ^[14]
5. Give the form of the ballot which shall show the question to be voted upon;
6. Set forth the form of notice of election; and
7. Provide for the posting and publication of the notice of election, the place and time thereof. Said notices of election shall further provide that the new Charter or the amendment to the Charter in its full context is open for examination at the office of the City Recorder and the City Recorder shall always have copies of every such measure at his office for inspection by any legal voter.

(Ord. No. 75-4, 6-3-75; Ord. No. 211, 12-11-56)

1-10-8: - REQUIREMENTS FOR SIGNING PETITION; PENALTY:

Legal voters of the City are qualified to sign a petition for the referendum or for the initiative for any measure which he is entitled to vote upon. Any person signing any name other than his own to a petition, or knowingly signing his name more than once for the same measure at one election, who is not at the time of signing the same a legal voter of the City, or any officer or other person violating any of the provisions of this Chapter shall, upon conviction thereof, be punished in accordance with the provisions of Section 1-4-1 of this Code.

(Ord. No. 211, 12-11-56; amd. 1981 Code)

1-10-9: - MANNER OF VOTING:

The manner of voting upon measures submitted to the legal voters shall be the same as now is, or may hereafter be, provided by law. No measure shall be adopted unless it shall receive the affirmative majority of the total number of legal votes cast on such measure and entitled to be counted thereon. If two or more laws on the same subject or containing provisions that are conflicting shall be approved by the voters at the same election, the measure receiving the greatest number of affirmative votes shall be proclaimed to be the law adopted.

(Ord. No. 211, 12-11-56)

1-10-10: - PROCLAMATION OF ELECTION RESULTS:

The Mayor or the Council shall, as soon as practicable after delivery by the County Clerk of the abstract of votes to the chief City elections officer, proclaim by posting printed or typewritten copies of such proclamation in at least two conspicuous places in the City, the adoption of such measure and amendment which shall have received the affirmative majority of the total number of votes cast thereon. In cases of ordinances which have been passed by the Council and voted upon by referendum, proclamation of the result of such vote shall also be made.

(Ord. No. 211, 12-11-56; amd. 1981 Code)

1-10-11: - PETITION AGAINST ORDINANCE PASSED BY COUNCIL:

Where referendum petitions shall be signed by the required number of legal voters against any ordinances passed by the Council, same shall be filed with the Recorder within 30 days after the passage and approval of the ordinance in question.

(Ord. No. 211, 12-11-56)

CHAPTER 11 - MUNICIPAL COURT; JURY TRIAL PROCEDURE

1-11-1: - DEFINITIONS:

The following words and phrases, whenever used in this Chapter, shall have the meanings ascribed to them in this Section, excepting those instances where the context clearly indicates a different meaning.

Words used in the present tense include the future; the masculine includes the feminine; and singular number includes the plural, and the plural the singular. The word "shall" is mandatory.

CHIEF OF POLICE: The Chief of Police of the City or his duly appointed representative.

CITY: The City of John Day, Oregon, a municipal corporation.

CITY RECORDER: The City Recorder of the City or his duly appointed representative.

COURT: The Municipal Court of the City

DEFENDANT: Any person charged with violation of this City Code or any ordinance of the City.

JUDGE: A judge of the Municipal Court of the City. ^[15]

JURY PANEL: A body of 20 persons, drawn from the jury list, from which body the trial juries are drawn.

JURY LIST: A list of persons residing within the City, who are known or believed to be in possession of the qualifications for jurors.

TRIAL JURY: A body of persons, six in number, sworn to try and determine questions of fact.

1-11-2: - RIGHT TO JURY TRIAL; JURY FEES:^[16]

- A. Right to Trial by Jury: In all prosecutions for any offense defined and made punishable by the Charter or any ordinance of the City, the defendant shall have the right of trial by jury.
- B. Defendant Advised of Right; Time for Exercising Right: At the time of arraignment, and in open court, the judge shall advise the defendant of the right to trial by jury. In order to avail himself of his right to trial by jury, a defendant shall make known his demand for a jury trial to the judge, either at the time of the defendant's arraignment or at the time of the entry of his plea. The trial judge may, at his discretion, accept the defendant's demand for a trial by jury at a time after the entry of the defendant's plea and before the time set for trial.
- C. Jury Fees:
 - 1. Deposit Required: Each juror sworn as a member of the trial jury shall be entitled to a fee of \$5.00. As a condition precedent to the exercise of the right to trial by jury, the defendant shall, upon demanding a jury trial,

deposit with the Court the amount of the jury fees, \$5.00 per juror or a total of \$30.00 for the trial jury. This deposit shall be made within 24 hours after the defendant's demand for a trial by jury; if the deposit is not made within 24 hours, the defendant shall be deemed to have waived his right to a trial by jury as provided by this Chapter.

2. Deposit Kept by Recorder: The City Recorder shall keep said deposit in a separate account until said jury shall have returned its verdict. In the event that a trial results in a judgment other than one based on a verdict of "guilty," or in the event that a trial results in a hung jury, the deposit or jury fees shall be returned immediately to the defendant, and the jury fees shall be paid by the City. In the event that the defendant is found "guilty" upon the trial of a case, the amount of defendant's deposit shall be retained.

1-11-3: - JURY SELECTION:

A. Competency and Qualifications of Jurors:

1. A person is not competent to act as a juror unless he is a resident of the City, and has been a resident thereof for the six months next preceding the time he is drawn or called.
2. The following laws of the State of Oregon, as they are now constituted, are hereby adopted and made a part of this Chapter:
ORS 10.030

ORS 10.040

ORS 10.050

These provisions shall govern competency and qualifications of jurors, exemptions from jury duty, and excuse from jury duty in the Municipal Court of the City.

B. Preparation of Jury List:

1. The preparation of the jury list shall proceed forthwith, and thereafter on the first Monday in January of each year, the City Recorder shall make a list of the most competent of the permanent residents of the City by selecting names by lot from the latest tax roll and registration books used at the

last City election, and this list shall be denominated the jury list. The jury list shall contain the names of at least 100 persons and not more than 300 persons.

2. The following laws of the State of Oregon, as they are now constituted, are hereby adopted and made a part of this Chapter:

ORS 10.110

ORS 10.130

ORS 10.150

ORS 10.160

These provisions shall govern the preparation of jury lists in the Municipal Court of the City; provided, however, that the City Recorder shall perform these functions ascribed to the County Court and the County Clerk in the statutory provisions hereby adopted.

C. Selection of the Jury Panel:

1. Forthwith, and thereafter on the third Monday of January and July of each year the City Recorder shall, in open court, proceed with the drawing of a jury panel of 20 persons, in the manner herein prescribed. The panel thus drawn shall be summoned to serve as the jury panel for the six months ensuing that in which the drawing was held.
2. The following laws of the State of Oregon, as they are now constituted, are hereby adopted and made a part of this Chapter:

ORS 10.210, subsections (1) and (3)

ORS 10.240

ORS 10.250

ORS 10.260

ORS 10.280

ORS 10.300

ORS 10.310

ORS 10.320

ORS 10.330

These provisions shall govern the method of drawing the jury panel for the Municipal Court of the City; the summoning of jurors for said Court; and the methods of drawing additional jurors to augment the panel or the jury list; provided, however, that the City Recorder shall perform those functions ascribed to the County Court and the County Clerk in the statutory provisions hereby adopted; and the Chief of Police shall perform those functions ascribed to the Sheriff.

1-11-4: - JURY FORMATION, FUNCTION:

- A. Formation: The trial jury shall consist of six persons chosen from the jury panel. The following laws of the State of Oregon, as they are now constituted, are hereby adopted and made a part of this Chapter:

ORS 17.110

ORS 17.115

ORS 17.120

ORS 17.125

ORS 17.130

ORS 17.135

ORS 17.140

ORS 17.145

ORS 17.150

ORS 17.160

ORS 17.165

ORS 17.170

ORS 17.175

ORS 17.180

ORS 17.185

ORS 136.230

ORS 136.240

ORS 136.250

These provisions shall govern the method of selection of the trial jury, the taking of challenges and the administration of the jury oath in the Municipal Court of the City; provided, however, that the defendant shall be entitled to four peremptory challenges and the City shall be entitled to two peremptory challenges, and no more.

B. Function: The following laws of the State of Oregon, as they are now constituted, are hereby adopted and made a part of this Chapter:

ORS 136.310

ORS 136.320

ORS 136.450

ORS 136.455

ORS 136.460

ORS 136.465

ORS 136.470

ORS 136.475

ORS 136.480

ORS 136.485

ORS 17.255

ORS 17.305

ORS 17.310

ORS 17.315

ORS 17.320

ORS 17.325

ORS 17.330

ORS 17.335

ORS 17.340

ORS 17.345

ORS 17.350

ORS 17.360

These provisions shall govern the function of the jury during the trial of cases in the Municipal Court of the City.

- C. Number of Jurors concurring in Verdict: In cases in the Municipal Court of the City, five-sixths of the jury may render a verdict.

(Ord. No. 68-13, 12-10-68)

1-11-5: - WITNESSES:

- A. In all criminal cases in the Municipal Court, the defendant shall be allowed two witnesses, and no more, at the expense of the City.
- B. The fees of witnesses in the Municipal Court shall be \$1.00 for each day's attendance.

(Ord. No. 53, 4-10-06; amd. 1981 Code)

1-11-6: - PENALTY:

The Court may impose a fine not exceeding \$20.00 for each day a juror who is a member of the jury panel returned by the Chief of Police, neglects to attend Court without reasonable cause.

(Ord. No. 68-13, 12-10-68)

CHAPTER 12 - REAL PROPERTY COMPENSATION CLAIMS

1-12-1: - PURPOSE:

This real property compensation ordinance is intended to implement the provisions added to chapter 197 of ORS by ballot measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the city; preserves and protects limited public funds; and establishes a record of the city's decision capable of circuit court review.

(Ord. No. 04-112-2, 11-23-2004)

1-12-2: - DEFINITIONS:

As used in this chapter, the following words and phrases mean:

APPRAISAL: A written statement prepared by an appraiser licensed by the appraiser certification and license board of the state of Oregon pursuant to ORS chapter 674. In the case of commercial or industrial property, the term "appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualifications, as demonstrated by written certificate.

CITY MANAGER: The city manager of the city of John Day, or his or her designee.

CITY OF JOHN DAY: The city of John Day shall be referred to herein as "city" or "city of John Day."

CLAIM: A claim filed under ballot measure 37.

EXEMPT LAND USE REGULATION: A land use regulation that:

- A. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law and offenses enumerated in this code;
- B. Restricts or prohibits activities for the protection of public health and safety, including, but not limited to: fire and building codes; health and sanitation regulations; solid or hazardous waste regulations; a regulation, ordinance, policy, standard or specification that regulates construction and performance standards for water, wastewater, transportation or public utility systems; and pollution control regulations;
- C. Is required in order to comply with federal law;
- D. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

- E. Was enacted prior to the date of acquisition of the real property by the owner or a family member of the owner who owned the subject real property prior to acquisition or inheritance by the owner, whichever occurred first.

FAMILY MEMBER: Shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the real property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the real property.

LAND USE REGULATION: Shall include:

- A. Any statute regulating the use of land or any interest therein;
- B. Administrative rules and goals of the land conservation and development commission;
- C. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- D. Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- E. Statutes and administrative rules regulating farming and forest practices.

The term "land use regulation" does not include "exempt land use regulations."

OWNER: The present owner of the real property, or any interest therein. The owner must be a person who is the sole fee simple owner of the real property or all joint owners whose interests add up to a fee simple interest in real property including all persons who represent all recorded interests in real property, such as co-owners, holders of less than fee simple interests, leasehold owners and security interest holders.

PROPERTY: Any real property or interest therein. It includes only a single parcel or contiguous parcel of a single owner. It does not include contiguous parcels or parcels not contiguous of a different owner.

REDUCTION IN VALUE: The difference in the fair market value of the real property without enforcement or application of a land use regulation and the value with enactment, enforcement or application of a land use regulation.

1-12-3: - CLAIM FILING PROCEDURES:

- A. A person seeking to file a claim pursuant to this chapter must be the present owner of the real property that is the subject of the claim at the time the claim is submitted. The claim shall be on a form established by the city manager and shall be filed with the city manager's office, or another city office if so designated by the city manager. The claim will not be accepted until found complete.
- B. A claim shall include the following information, reports and fee. A claim shall not be accepted for filing without all of the following:
 - 1. Fee: An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and claim processing. The city shall record its actual costs for processing the claim, and, in the event that the advance payment is not sufficient to cover all of the city's costs, then the owner shall pay the balance owed, if any, upon receipt of a billing statement from the city. The city may send the owner periodic billing statements. If the owner does not pay on the billing statements when due, the owner will be deemed to have abandoned the claim. If the advance fee is more than the amount of the city's actual costs in processing the claim, then the excess shall be returned to the owner. This fee shall be established by council resolution. In the event that the fee is not paid in full, the city of John Day shall have a lien against any real property owned by the owner(s), and the city may take any enforcement actions to collect such fee as provided by law.
 - 2. Form: A completed claim form supplied by the city manager.
 - 3. Identification: The name(s), address(es) and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each. If the applicant is not the owner, the applicant must submit a valid power of attorney created by the owner authorizing the applicant to act on behalf of the owner.
 - 4. Real Property Description and Title Report: The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than 30 days prior to the submission of

the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired.

5. Copy of Existing Regulation: The current land use regulation(s) that the owner making a claim states allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject real property.
6. Copy of Prior Regulation: A copy of the land use regulation in existence, and applicable to the real property when the owner became the owner of the real property, and a copy of the land use regulation in existence immediately before the regulation was enacted or enforced or applied to the real property that the owner claims restricts the use of the real property and, the owner claims, caused a reduction in fair market value due to the land use regulation in question being more restrictive.
7. Amount of Claim; Appraisal: The amount of the claim, based on the alleged reduction in value of the real property supported by a copy of an appraisal by an appraiser licensed by the appraiser certification and licensure board of the state of Oregon as defined herein. The appraisal shall indicate the amount of the alleged reduction in the fair market value of the real property before and after enactment, enforcement or application of the land use regulation in question, and explaining the rationale and factors leading to that conclusion. Any claims valuing over \$30,000.00 shall require two appraisals by the owner.
8. Narrative: The owner shall provide a narrative describing the history of the owner and/or family member's ownership in the real property, the history of the relevant land use regulations applicable to the claim, and how the enactment, enforcement or application of the land use regulation restricts the use of the real property, or any interest therein, and has the effect of reducing the fair market value of the real property, or any interest therein.
9. Statement Regarding Exceptions: A statement by the real property owner making the claim of why the land use regulation in question is not an "exempt land use regulation".
- 10.

Site Plan and Drawings: A copy of the site plan and drawings in a readable, legible eight and one-half by 11-inch format related to the expected use of the real property should the land use regulation be modified, removed or not applied.

11. Copies of Leases or CCRs: Copies of any leases or covenants, conditions and restrictions (CCRs) applicable to the real property, if any, that impose restrictions on the use of the property.

(Ord. No. 04-112-2, 11-23-2004)

1-12-4: - CITY MANAGER INVESTIGATION AND RECOMMENDATION:

- A. Following an investigation of a claim, the city manager shall forward a recommendation to the city council that the claim be:
 1. Denied;
 2. Investigated further;
 3. Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
 4. Evaluated in another manner not inconsistent with this chapter or ballot measure 37, including possible city condemnation of the property.
- B. If the city manager's recommendation is that a claim be denied, and no elected official informs the city manager within 14 days that the official disagrees, then the city manager may deny the claim. If an elected official objects, then the city manager shall wait an additional seven days to see whether two more elected officials object to the proposed denial. If they do, then the city manager shall schedule a work session with the city council. If not, the city manager may deny the claim.

(Ord. No. 04-112-2, 11-23-2004)

1-12-5: - CITY COUNCIL PUBLIC HEARING:

The city council shall conduct a public hearing before taking final action on a recommendation from the city manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 100 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the city council whose boundaries include the subject property.

(Ord. No. 04-112-2, 11-23-2004)

1-12-6: - CITY COUNCIL ACTION ON CLAIM:

- A. Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the city council shall:
 - 1. Determine that the claim does not meet the requirements of ballot measure 37 and this chapter, and deny the claim; or
 - 2. Adopt a resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.
- B. The city council decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.
- C. The owner will bear the burden of proof relating to the claim, the devaluation of the owner's property and the owner's entitlement to just compensation. The standard of proof will be by a preponderance of the evidence.
- D. A copy of the city council order will be sent by mail to the owner and to each individual or entity that participated in the city council review if the city was provided with a mailing address.
- E. The city council may establish by resolution additional procedures related to the processing of ballot measure 37 claims.

(Ord. No. 04-112-2, 11-23-2004)

1-12-7: - CONDITIONS, REVOCATION AND TRANSFER:

- A. The city council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under this chapter.
- B. Failure to comply with any condition of approval is grounds for revocation of the approval of the compensation for the claim, grounds for recovering any compensation paid and grounds for revocation of any other action taken under this chapter.
- C.

If the owner, or the owner's successor in interest fail to fully comply with all conditions of approval, the city may institute a revocation or modification proceeding before the city council under the same process for city council review of a claim under this chapter.

- D. Unless otherwise stated in the city's decision, any action taken under this chapter runs with the property and is transferred with ownership of the real property. All conditions, time limits or other restrictions imposed with approval of a claim will bind all subsequent owners of the subject property.
- E. All potential claims that an owner knew or should have known exist as of the date of a claim is submitted must be included in that claim if they are to be preserved. Any potential claim not included is waived by the real property owner.

(Ord. No. 04-112-2, 11-23-2004)

1-12-8: - PROCESSING FEE:

- A. The city manager shall maintain a record of the city's costs in processing a claim. Following final action by the city on the claim at the local level, the city manager shall send to the real property owner a bill for the actual costs, including staff and legal costs, that the city incurred in reviewing and acting on the claim.

(Ord. No. 04-112-2, 11-23-2004)

1-12-9: - ATTORNEY FEES:

If a claim made herein is denied or not fully paid within 180 days of the date of filing a completed claim, and the owner commences suit or action to collect compensation, if the city is the prevailing party in such action, then city shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney fees. In the event the city is the prevailing party and is represented by "in house" counsel, the prevailing party shall nevertheless be entitled to reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the city of John Day for the type of legal services performed.

(Ord. No. 04-112-2, 11-23-2004)

1-12-10: - PRIVATE CAUSE OF ACTION:

If the city council's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other real property located in the vicinity of the real property, the owner(s) of the other real property shall have a cause of action in the appropriate Oregon circuit court to recover from the owner(s) (of the real property subject to the claim) in the amount of such reduction in value. A person who recovers for a reduction in value of real property under this section shall be entitled to recover attorney fees and disbursements from the owner(s) (of the real property subject to the claim). This section does not create a cause of action against the city of John Day.

(Ord. No. 04-112-2, 11-23-2004)

1-12-11: - AVAILABILITY OF FUNDS TO PAY CLAIMS:

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

(Ord. No. 04-112-2, 11-23-2004)

1-12-12: - SEVERABILITY:

If any phrase, clause, or other part or parts of this chapter are found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

(Ord. No. 04-112-2, 11-23-2004)

1-12-13: - APPLICABLE STATE LAW:

For all claims filed with the city of John Day, the applicable state law is ballot measure 37 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon state legislature or Oregon state administrative agencies. Any claim that has not been processed completely under this chapter shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this chapter shall be read in a manner so not to conflict with such amendments, modifications, clarifications or other action taken at the state level. This chapter is adopted solely to address claims filed under the authority of those provisions of ballot measure 37. Except as expressly provided by this chapter, no rights independent of said provisions are created by adoption of this chapter.

(Ord. No. 04-112-2, 11-23-2004)

CHAPTER 13 - PUBLIC CONTRACTING REGULATIONS

1-13-1: - SHORT TITLE:

The provisions of this chapter and all rules adopted under this chapter may be cited as the city of John Day's PUBLIC CONTRACTING REGULATIONS.

(Ord. No. 06-124-3, 6-27-2006)

1-13-2: - POLICY:

- A. Purpose of Public Contracting Regulations: These regulations are promulgated by the council as the local contract review board ("board"), as the governing body and local contract review board of the city of John Day; for the purpose of establishing the rules and procedures for contracts entered into by the city of John Day. It is the policy of the city in adopting the public contracting regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - 1. Promoting impartial and open competition;
 - 2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - 3. Taking full advantage of evolving procurement methods that suit the contracting needs of the city as they emerge within various industries.
- B. Interpretation of Public Contracting Rules: In furtherance of the purpose of the objectives set forth in subsection A of this section, it is the city's intent that the city of John Day's public contracting regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS chapters 279A, 279B and 279C.

(Ord. No. 06-124-3, 6-27-2006)

1-13-3: - APPLICATION OF PUBLIC CONTRACTING REGULATIONS:

- A. In accordance with ORS 279A.025 the city's public contracting regulations and the Oregon public contracting code do not apply to the following classes of contracts:

1. Between Governments: Contracts between the city and a contracting agency or between the city and a public body or agency of the state of Oregon or its political subdivisions, or between the city and an agency of the federal government.
2. Grants: Grants, but not the expenditure of grant funds. A "grant contract" is an agreement under which the city is either a grantee or a grantor of monies, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions. The making or receiving of a grant is not a public contract subject to the Oregon public contracting code; however, the expenditure of any grant received by the city is subject to these regulations and the expenditure of grants made by the city to construct a public improvement or public works project is subject to these public contracting regulations.
3. Legal Witnesses and Consultants: Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the city is or may become interested.
4. Real Property: Acquisitions or disposals of real property or interests in real property.
5. Textbooks: Contracts for the procurement or distribution of textbooks.
6. Oregon Corrections Enterprises: Procurements from an Oregon corrections enterprises program.
7. Finance: Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt by the city, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special, or limited;
 - b.

The making of program loans and similar extensions or advances of funds, aid or assistance by the city to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;

- c. The investment of funds by the city as authorized by law; or
 - d. Other predominantly financial transactions of the city that, by their character, cannot practically be established under the competitive contractor selection procedures, as determined by the city council.
- 8. Employee Benefits: Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565.
- 9. Exempt Under State Laws: Any other public contracting specifically exempted from the Oregon public contracting code by another provision of state law.
- 10. Federal Law: Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon public contracting code or these regulations, or require additional conditions in public contracts not authorized by the Oregon public contracting code or these regulations.

(Ord. No. 06-124-3, 6-27-2006)

1-13-4: - REGULATION OF CITY COUNCIL:

Except as expressly delegated under these regulations the council reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

- A. Solicitation Methods Applicable to Contracts: Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- B. Brand Name Specifications: Exempt the use of brand name specifications for public improvement contracts;
- C.

Waiver of Performance and Payment Bonds: Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;

- D. Electronic Advertisement of Public Contracts: Authorize the use of electronic advertisements for public contracts in lieu of publication in a newspaper of general circulation;
- E. Appeals: Hear properly filed appeals of city's determination of debarment, or concerning prequalification or contract award;
- F. Rulemaking: Adopt contracting rules under ORS 279A.065 and 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements;
- G. Award: Award all contracts;
- H. Delegation: Delegate to any employee or agent of the city any of the duties or authority of a contracting agency; and
- I. Mandatory Review of Rules: Whenever the Oregon state legislative assembly enacts laws that cause the attorney general to modify its model rules, the city shall review when able these regulations to determine whether any modifications to the regulations need to be adopted by the city to ensure compliance with statutory changes.

(Ord. No. 06-124-3, 6-27-2006)

1-13-5: - MODEL RULES:

The model rules adopted by the attorney general under ORS 279A.065, are adopted as supplemental to this chapter and the city council for the city of John Day deems they are necessary to supplement this chapter, and will apply only to the extent that they do not conflict with the contracting regulations adopted by the city council for the city of John Day.

(Ord. No. 06-124-3, 6-27-2006)

1-13-6: - DEFINITIONS:

For the purposes of these regulations, the following mean:

AWARD: The selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the city until the contract is executed and delivered by the city.

BID: A binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

CITY: The city of John Day, Oregon.

CONTRACT PRICE: The total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

CONTRACT REVIEW BOARD OR LOCAL CONTRACT REVIEW BOARD OR BOARD: The city council for the city of John Day.

CONTRACTOR: The person with whom the city executes a public contract.

DEBARMENT: A declaration by the city council under ORS 279B.130 or 279C.440 that prohibits a potential contractor from competing for the city's public contracts for a prescribed period of time.

DISPOSAL: Any arrangement for the transfer of property by the city under which the city relinquishes ownership.

EMERGENCY: Circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and requires prompt execution of a contract to remedy the condition.

ENERGY SAVINGS PERFORMANCE CONTRACT: A contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

FINDINGS: The statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

GOODS: Any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

INFORMAL SOLICITATION: A solicitation made in accordance with the city's public contracting regulations to a limited number of potential contractors, in which the city attempts to obtain at least three written quotes or proposals.

INVITATION TO BID: A publicly advertised request for competitive sealed bids.

MODEL RULES: The public contracting rules adopted by the attorney general under ORS 279A.065.

NONRESIDENT BIDDER: A bidder who is not a "resident bidder" as defined in this section.

OFFEROR: A person who submits a bid, quote or proposal to enter into a public contract with the city and includes a bidder or proposer.

OPENING: The date, time and place announced in the solicitation document for the public opening of written, sealed offers.

OREGON PUBLIC CONTRACTING CODE: ORS chapters 279A, 279B and 279C.

PERSON: A natural person or any other private or governmental entity having the legal capacity to enter into a binding contract.

PERSONAL SERVICE CONTRACT: A contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors, and other licensed professionals, administrators, artists, computer programmers, consultants, designers, performers and property managers. The city council shall have discretion to determine whether additional types of services not specifically mentioned in this definition fit within the definition of personal services.

PROPOSAL: A binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

PUBLIC CONTRACT: A sale or other disposal, or a purchase, lease, rental or other acquisition, by the city of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

PUBLIC IMPROVEMENT: A project for construction, reconstruction or major renovation on real property by or for the city. "Public improvement" does not include:

- A. Projects for which no funds of the city are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- B. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

QUALIFIED POOL: A pool of vendors who are prequalified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

QUOTE: A price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

REQUEST FOR PROPOSALS: A publicly advertised request for sealed competitive proposals.

RESIDENT BIDDER: A bidder that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid, has a business address in Oregon and has stated in the bid whether the bidder is a "resident bidder" under this definition.

SOLICITATION: An invitation to one or more potential contractors to submit a bid, proposal, quote, offer, statement of qualifications or letter of interest to the city with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the city requests, receives, and evaluates potential contractors and awards public contracts.

SOLICITATION AGENT: The city manager.

SOLICITATION DOCUMENTS: All informational materials issued by the city for a solicitation, including, but not limited to, advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

STANDARDS OF RESPONSIBILITY: The qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- A. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- B. A satisfactory record of performance. The city shall document the record of performance of an offeror if the city finds the offeror to be not responsible under this subsection;
- C. A satisfactory record of integrity. The city shall document the record of integrity of an offeror if the city finds the offeror to be not responsible under this subsection;
- D. Qualified legally to contract with the city;
- E. Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the city concerning responsibility, the city shall base the determination of responsibility upon any available information or may find the offeror nonresponsible; and
- F. Not been debarred by the city, and, in the case of public improvement contracts, has not been listed by the construction contractors board as a contractor who is not qualified to hold a public improvement contract.

SURPLUS PROPERTY: Personal property owned by the city which is no longer needed for use by the city.

(Ord. No. 06-124-3, 6-27-2006)

1-13-7: - PUBLIC CONTRACTS; PROCESS FOR APPROVAL OF SPECIAL SOLICITATION METHODS AND EXEMPTIONS:

A.

Authority of the City Council: In its capacity as contract review board for the city, the city council upon its own initiative, or upon request of the solicitation agent, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

B. Basis for Approval: The approval of a special solicitation method or exemption from competition must be based upon a record before the board that contains the following:

1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
2. The estimated contract price or cost of the project, if relevant;
3. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
5. A description of the proposed alternative contracting methods to be employed; and
6. The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the board may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

C. Hearing:

1. Notice: The city council shall approve the special solicitation or exemption after a public hearing before the board following notice by publication in at least one newspaper of general circulation in the city. The notice shall be published at least seven days prior to the hearing. The notice shall state that the purpose of the hearing is to consider findings in support of, as applicable:

- a. A special procurement for a single contract or class of contracts under ORS 279B.085; or
- b. An exemption from competitive bidding for a single contract or class of contracts under ORS 279C.335.

The notice shall describe how copies of the draft findings may be obtained for review prior to the hearing and state that persons who wish to comment on or protest the considered action may appear and present testimony at the hearing.

2. Opportunity for Comment: At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.
3. Consideration and Approval: The board will consider the findings and may approve the special solicitation or exemption as proposed or as modified by the board after providing an opportunity for public comment.
4. No Published Notice Required: If the board approves the special procurement(s) or exemption(s) at the public meeting of the city council following the hearing, or at a subsequent public meeting of the city council, no published notice of the approval shall be required.

D. Public Improvement Contract Exemption Special Requirements:

1. Public Hearing Notice: Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.
2. Notice Content: The notice shall state that the public hearing is for the purpose of taking comments on the city's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.
3. Commencement of Solicitation Prior to Approval: A solicitation may be issued prior to the approval of a special exemption under this section, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the board approves the exemption. If the board fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or canceled.

1-13-8: - PUBLIC CONTRACTS; SOLICITATION METHODS FOR CLASSES OF CONTRACTS:

The city may encourage meaningful competition through a variety of solicitation methods. The following classes of public contracts and the methods that are approved for the award of each of the classes are hereby established by the city council. However, nothing in this section may be construed as prohibiting the city from conducting a procurement under competitive bidding or competitive proposal procedures.

- A. Contracts Subject to Award at Solicitation Agent's Discretion; Direct Purchase or Appointment: The following classes of contracts may be awarded in any manner which the solicitation agent deems appropriate to the council's needs, including by direct appointment or purchase. Except where otherwise provided the solicitation agent shall make a record of the method of award.
 - 1. Advertising: Contracts for the placing of notice or advertisements in any medium.
 - 2. Amendments: Contract amendments shall not be considered to be separate contracts if made in accordance with the public contracting regulations.
 - 3. Animals: Contracts for the purchase of animals.
 - 4. Contracts Up To \$500.00: Contracts of any type for which the contract price does not exceed \$5,000.00 without a record of the method of award.
 - 5. Copyrighted Materials; Library Materials: Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
 - 6. Equipment Repair: Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without preliminary dismantling or testing.
 - 7.

Government Regulated Items: Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

8. Hazardous Material Removal and Oil Cleanup: The city may acquire services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon department of environmental quality pursuant to its authority under ORS chapter 466.
9. Insurance: Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
10. Nonowned Property: Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the city.
11. Small Concessions:
 - a. Contracts Under \$5,000.00: Concession agreements for which the board estimates that receipts by the city will not exceed \$5,000.00 in any fiscal year, and \$50,000.00 in the aggregate may be awarded by any method deemed appropriate by the board; including, without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
 - b. Single Event Concessions: Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the board to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
12. Sole Source Contracts: Contracts for goods or services, which are available from a single source, may be awarded without competition.
13. Specialty Goods for Resale: Contracts for the purchase of specialty goods by city for resale to consumers.
14. Sponsor Agreements: Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.

15. Structures: Contracts for the disposal of structures located on city owned property.
16. Renewals: Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
17. Temporary Extensions or Renewals: Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired contract, other than a contract for public improvements.
18. Temporary Use of City Owned Property: The city may negotiate and enter into a license, permit or other contract for the temporary use of city owned property without using a competitive selection process if:
 - a. The contract results from an unsolicited proposal to the city based on the unique attributes of the property or the unique needs of the proposer;
 - b. The proposed use of the property is consistent with the city's use of the property and the public interest; and
 - c. The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.
19. Used Property: The solicitation agent, for procurements up to \$50,000.00 may contract for the purchase of used property by negotiation, if such property is suitable for the city's needs and can be purchased for a lower cost than substantially similar new property. For this purpose the cost of used property shall be based upon the life cycle cost of the property over the period for which the property will be used by the city. There shall be a written record of the purchase.
20. Utilities: Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

B. Public Improvement Contracts:

1. Types of Public Improvement Contracts:

- a. Any Public Improvement: Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued under an invitation to bid.
 - b. Nontransportation Public Improvements up to \$100,000.00: Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price exceeds \$5,000.00, but does not exceed \$100,000.00, may be awarded using an informal solicitation for quotes.
 - c. Transportation Public Improvements up to \$50,000.00: Contracts for which the estimated contract price exceeds \$5,000.00, but does not exceed \$50,000.00, for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes.
2. Report to City Council on Nonbid Public Improvement Projects:
- a. Upon completion of and final payment for any public improvement contract, or class of public improvement contracts described in ORS 279A.050(3)(b), in excess of \$100,000.00; for which the city did not use the competitive bidding process, the board shall prepare and deliver to the city council an evaluation of the public improvement project, or class of public improvement contracts. The evaluation shall include, but not be limited to, the following matters:
 - (1) The actual project cost as compared with original project estimates;
 - (2) The amount of any guaranteed maximum price;
 - (3) The number of project change orders issued by the owner;
 - (4) A narrative description of successes and failures during the design, engineering and construction of the project; and
 - (5) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

- b. Evaluations required by subsection B2a of this section must be made available for public inspection, and be completed within 30 days of the date that the board accepts:
 - (1) The public improvement project; or
 - (2) The last public improvement project if the project falls within a class of public improvement contracts.
- C. Hybrid Contracts: The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.
 - 1. Design/Build and CM/GC Contracts: Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method may be approved by the board if the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city.
 - 2. Energy Savings Performance Contracts: Unless the contract qualifies for award under another classification in this section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the city's public contracting regulations.
- D. Purchases from Nonprofit Agencies for Disabled Individuals: The city shall purchase goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.
- E. Emergency Procurements:
 - 1. In General: When an official with authority to enter into a contract on behalf of the city or board determines that immediate execution of a contract, within the official's authority is necessary to prevent a substantial risk of loss, damage, injury or interruption of services; or a substantial threat to property, public health, welfare or safety, the

official or board may execute the contract without competitive selection and award or city council approval; but, where time permits, the official or board shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. Emergency Public Improvement Contracts: A public improvement contract may only be awarded under emergency circumstances if the designated city official or board has made a written declaration of emergency. Any public improvement contract awarded under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the board grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the designated city official or board may waive the requirement for all or a portion of required performance and payment bonds.
3. Reporting: A designated official or board who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, document the nature of the emergency; and for goods or services contracts, describe the method used for the selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the city and the public; and notify the board of the facts and circumstances surrounding the emergency execution of the contract.

F. Surplus Property:

1. General Methods: Surplus property may be disposed of by any of the following methods upon a determination by the solicitation agent that the method of disposal is in the best interest of the city. Factors that may be considered by the solicitation agent include costs of sale, administrative costs, and public benefits to the city. The solicitation agent shall maintain a record of the manner of disposal, including the name of the person to whom the surplus property was transferred.
 - a. Auction: By publicly advertised auction to the highest bidder.
 - b. Bids: By public advertised invitation to bid. All bids shall remain

sealed until the close of the bidding period.

- c. Donation: By donation to any nonprofit cause or organization operating within or providing a service to residents of the city.
 - d. Governments: Without competition, by transfer or sale to another public agency.
 - e. Fixed Price Sale: The board may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 - f. Liquidation Sale: By liquidation sale using a commercially recognized third party liquidator selected in accordance with rules for the award of personal services contracts.
 - g. Trade In: By trade in, in conjunction with acquisition of other price based item under a competitive procurement. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
- 2. Disposal of Property With Minimal Value: Surplus property which has a value of less than \$500.00, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost effective, including by disposal as waste. The official making the disposal shall make a record of the estimated value of the item and the manner of disposal.
 - 3. Restriction on Sale to City Employees: City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.
 - 4. Personal Use Items: An item (or indivisible set) of specialized and personal use, other than police officers' handguns, with a current value of less than \$100.00 may be sold to the employee or retired or

terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the city council.

5. Police Officers' Handguns: If a police officer's handgun is not considered the police officer's personal property, upon honorable retirement from service with the city, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the city at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the city shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
 6. Conveyance To Purchaser: Upon the consummation of a sale of surplus personal property, the city shall make, execute and deliver, a bill of sale signed on behalf of the city, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.
- G. Federal Purchasing Programs: Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States general services administration ("GSA") as provided in this subsection.
1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the board. The board shall provide the city with a copy of the letter, memorandum or other documentation from GSA establishing permission to the city to purchase under the federal program.
 2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
 - 3.

The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the city.

4. If a single purchase of goods or services exceeds \$150,000.00, the board must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the city. This subsection G4 does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
- H. Cooperative Procurement Contracts: Cooperative procurements may be made without competitive solicitation as provided in the Oregon public contracting code.
- I. Personal Service Contracts: Personal services contracts in any amount may be awarded under any method deemed in the city's best interest by the board, including by direct appointment; subject to approval by the city council when required by this chapter.
1. Additional Types of Services: The city council shall have discretion to determine whether additional types of services not specifically mentioned in this chapter fit within the definition of personal services. Personal service consultant contracts may include, but are not limited to, consultants for planning, grants and other city services.
 2. Personal Service Contracts for Continuation of Work: Contracts for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the board determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
- J. Intermediate and Major Concessions: For concession agreements for which receipts by the city exceed \$5,000.00 in a fiscal year or \$50,000.00 in the aggregate, and the concessionaire's projected annual gross revenues are estimated to be \$500,000.00 or less, the board has discretion to use

either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000.00, the board may, but shall not be required to, reissue the solicitation as a request for proposals. Major concession agreements, for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000.00 annually, shall be awarded using a request for proposals.

- K. Contracts for Goods and Services Exceeding \$5,000.00: The procurement of goods or services, for which the estimated contract price exceeds \$5,000.00, but not exceeding \$150,000.00, may be awarded under an informal solicitation for either quotes or proposals.

(Ord. No. 06-124-3, 6-27-2006)

1-13-9: - PUBLIC CONTRACTS; INFORMAL SOLICITATION PROCEDURES AND QUALIFIED POOLS:

The board may use the following procedure for informal solicitations in lieu of the procedures set forth in the model rules:

- A. Informally Solicited Quotes and Proposals: When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the board, or in any other manner which the board deems suitable for obtaining competitive quotes or proposals. The board shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.
 - 1. Award; Record of Contract Requirements and Evaluation Criteria: The board shall make a written record of the contract requirements and criteria upon which the award will be based before conducting the solicitation. This record shall be used to provide all potential offerors with the same information concerning the contract requirements and the manner in which their offers will be evaluated.
 - 2.

Contact with Potential Offerors: The board's request for quotes or proposals may be by general or limited distribution to a certain group of vendors, by direct inquiry to persons selected by the board, or in any other manner that the board deems suitable for obtaining a sufficient number of competitive quotes or proposals.

3. Number of Offers: The board shall attempt to obtain at least three responsive quotes or proposals from offerors who are qualified to perform the contract unless three offers cannot be reasonably obtained. If fewer than three quotes or proposals are reasonably available, fewer will suffice, but the board shall make a record of the efforts made to obtain the offers.
4. When Written Solicitation Required: The request for offers and the receipt of offers shall be made in writing in the following cases:
 - a. Contracts for Goods, Services or Personal Services: If the estimated contract price will exceed \$75,000.00, the board shall request written quotes or proposals using a written description of contract requirements and award criteria.
 - b. Contracts for Public Improvements: The board shall request written quotes for all public improvement contracts not exempt from this requirement herein, and shall present the description of contract requirements and award criteria using written materials unless the information can be given by other means in a conference or oral presentation at which all potential offerors are present and have an opportunity to ask questions. Notwithstanding the foregoing sentence, when soliciting quotes for a public works project, the board must deliver all written materials, including written copies of the prevailing wage rates required by the bureau of labor and industries.
5. Basis for Award: Selection of contractors for goods, services and personal services shall be based on the quote or proposal that is most advantageous to the city. The selection criteria for public improvement contracts shall be based on quotes but may include a consideration of, and ranking of, other factors in addition to price, such as experience, specific expertise, availability, project

understanding, contractor capacity, responsibility and similar factors.

The board shall make a written record of all offerors, the prices quoted and, if the award was made on a basis other than price, a record of the evaluation of each offer and the basis for award.

6. Discussions and Negotiations: The board may discuss the solicitation requirements for any type of informal solicitation with potential offerors and may discuss a quote or proposal with an offeror to clarify its quote or proposal or to effect modifications that will make the quote or proposal responsive to the solicitation requirements. Except for solicitations involving public improvements, after all initial quotes have been received and recorded, the board may negotiate with an offeror to effect modifications that will make the quote or proposal more advantageous to the city. The board may not disclose the price offer or terms of one offeror to another during discussions prior to contract award.
7. Amendment: A contract awarded using an informal solicitation may be amended only as provided in these regulations.

B. Qualified Pools:

1. Purpose of Qualified Pools: In lieu of prequalification on a contract by contract basis, the board may establish qualified pools that can be used on a continuous basis for the selection of contractors when direct appointment or informal solicitation is otherwise authorized by these regulations.
2. Creation of Qualified Pool: To create a qualified pool, the board may invite prospective contractors to submit their qualifications to the city for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services and public improvements.
3. Advertisement: The invitation to participate in a qualified pool shall be advertised, at the discretion of the solicitation agent, by publication in a newspaper of general circulation in the city area, by electronic publication as permitted in these regulations or by any other method that the solicitation agent deems desirable to develop a sufficient pool of qualified vendors. The advertisement shall be

made at the time of initial formation and whenever the qualified pool contract is subject to reopening or renewal. If the pool is open to entry at any time, and is continuously advertised on the city's website, no additional advertisement shall be required.

4. Qualification for Participation: A qualified pool shall be open for entry not less than once in each three years. Standards for participation in a qualified pool may include the applicant's financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the city. The city council may also require, as a condition to participation, that the applicant furnish additional materials such as proof of licensure, insurance, insurance endorsements to protect the interests of the city, material concerning performance and fidelity bonds, and that the applicant agree to the terms and conditions of participation in the qualified pool. The qualifications for participation in each qualified pool shall be set forth in writing, but may be changed at any time, provided that all participants are notified of the change.
5. Contents of Solicitation: Requests for participation in a qualified pool shall describe the scope of goods or services or personal services for which the pool will be maintained, and the minimum qualifications for participation in the pool.
6. Use of Qualified Pools: The board may use a qualified pool to make direct appointments as authorized in these regulations or to obtain quotes or proposals for an informal solicitation, but shall not be limited to selection from a qualified pool. Participation in a qualified pool shall not entitle any participant to the award of a city contract.
7. Amendment and Termination: The board may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- 8.

Protest of Failure To Qualify: The board shall notify any applicant who fails to qualify for participation in a pool that it may appeal the board's decision to the board in the manner described in section 1-13-14 of this chapter.

(Ord. No. 06-124-3, 6-27-2006)

1-13-10: - REQUIREMENTS FOR INVITATIONS TO BID, AND REQUESTS FOR PROPOSALS:

- A. Unless otherwise provided in these regulations, all formal bids and proposals made to the city shall:
 - 1. Be in writing.
 - 2. Be filed with the solicitation agent before the closing. Any offer received after the closing is late. An offeror's request for withdrawal or modification of an offer received after the closing is late. The city shall not consider late offers or late modification of an offer or late withdrawal of an offer.
 - 3. Be opened publicly by the city at the date, time and place designated in the solicitation.

(Ord. No. 06-124-3, 6-27-2006)

1-13-11: - USE OF BRAND NAME SPECIFICATIONS FOR PUBLIC IMPROVEMENTS:

- A. In General: Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
 - 1. It is unlikely that such exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; or
 - 2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the city; or
 - 3. There is only one manufacturer or seller of the product of the quality required; or
 - 4. Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

- B. Authority of Board: The board shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection A of this section.
- C. Brand Name or Equivalent: Nothing in this section prohibits the city from using a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the city, or from establishing a qualified product list.

(Ord. No. 06-124-3, 6-27-2006)

1-13-12: - BID, PERFORMANCE AND PAYMENT BONDS:

- A. Board may Require Bonds: The board may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- B. Bid Security: Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$75,000.00 shall require bid security. Bid security for a request for proposal may be based on the city's estimated contract price.
- C. Performance Bonds: Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.
 - 1. Contracts Involving Public Improvements: Prior to executing a contract for more than \$50,000.00, that includes the construction of a public improvement, contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the city and any public agency that is providing funding for the project for which the contract was awarded.
 - 2. Cash in Lieu: The board may permit the successful offeror to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.
- D. Payment Bonds: Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.

1. Contracts Involving Public Improvements: Prior to executing a contract for more than \$50,000.00 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.
2. Design/Build Contracts: If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.
3. Construction Manager/General Contractor Contracts: If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection D1 of this section upon execution of an amendment establishing the guaranteed maximum price. The city shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
4. Surety; Obligation: Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the city or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the solicitation agent.

5. Emergencies: In cases of emergency, or when the interest or property of the city probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of subsection 1-13-8E of this chapter, unless the board requires otherwise.

(Ord. No. 06-124-3, 6-27-2006)

1-13-13: - ELECTRONIC ADVERTISEMENT OF PUBLIC CONTRACTS:

In lieu of publication in a newspaper of general circulation in the city area, the advertisement for an invitation to bid or request for proposals for any type of public contract may be published electronically by posting on the city's website, provided that the following conditions are met:

- A. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- B. The solicitation agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the area and will provide costs savings for the city, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the area in encouraging meaningful competition.

(Ord. No. 06-124-3, 6-27-2006)

1-13-14: - PROTESTS AND APPEALS:

- A. **Protests Generally:** A prospective offeror for a public contract may file a protest with the city if the prospective offeror believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective offeror fails to timely file such a protest, the prospective offeror may not challenge the contract for any of the foregoing reasons in any future legal or administrative proceeding.

1. Exception for Special Procurements: The procedures for a contract specific special procurement approved by the board may not be protested, challenged or reviewed unless the approval of the special procurement by the board has been invalidated by a reviewing circuit court under ORS 279B.400 or any amendment thereof.
2. Time for Submission of Protest: Protests of a solicitation shall only be considered when presented to the city manager in writing in accordance with the following time lines:
 - a. Protests shall be submitted in writing, not less than five days prior to the solicitation closing unless the solicitation period is shorter than seven days, in which case, the solicitation documents shall recite another protest deadline that allows a period of at least one business day after the issue date of the solicitation to submit protests; and
 - b. Protests not asserted or not properly asserted within these time lines shall be deemed waived by the protester.
3. Identification of Protest: It is the protester's responsibility to ensure that the protest is received by the city within the stated time lines. The protest should be delivered in an envelope that is clearly marked with the protester's name and sufficient information to identify the solicitation being protested, identified as a protest, and directed to the person identified in the solicitation documents for receipt of protests. Faxed protests may not be accepted.
4. Eligibility for Consideration: The city manager shall consider the protest if the protest is timely filed and contains the following:
 - a. Sufficient information to identify the solicitation that is the subject of the protest;
 - b. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based; and
 - d. The relief sought.
- 5.

Form of Decision: If the protest is timely submitted and contains the required information, the city manager shall consider the protest and issue a decision in writing. Otherwise, the city manager shall promptly notify the prospective protesting offeror that the protest is untimely or that the protest failed to meet the requirements of this subsection A and give the reasons for the failure.

6. Time of Decision: The city manager shall issue a decision no less than 72 hours before the solicitation closing, unless a written determination is made by the board that circumstances exist that require a shorter time limit.
7. Appeal: The city manager's decision may be appealed to the board by notifying the city of the intent to appeal within three business days after the date on which the city manager sends its decision to the protestor's electronic or postal address specified in the written protest.
8. Finality of Decision: The decision of the board, or if no appeal is made to the board, the decision of the city manager shall be the final determination of the city on the protest.
9. Delay of Solicitation Closing: If the city receives a protest from an offeror in accordance with this subsection A, the city manager may in his or her discretion or the board may extend the date of solicitation closing if the city manager or board determines an extension is necessary to consider the protest and, if necessary, to issue addenda to the solicitation documents or otherwise cancel the solicitation.

B. Appeal of Debarment or Prequalification Decision:

1. Right to Hearing: Any person who has been debarred from competing for city contracts or for whom prequalification has been denied, revoked or revised may appeal the city's decision to the city council as provided in subsection B4 of this section.
2. Filing of Appeal: The person must file a written notice of appeal with the city within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
3. Notification of City Council: Immediately upon receipt of such notice of appeal, the city manager shall notify the city council of the appeal.
4. Hearing: The procedure for appeal from a debarment or denial, revocation

or revision of prequalification shall be as follows:

- a. Promptly upon receipt of notice of appeal, the city shall notify the appellant of the time and place of the hearing;
 - b. The city council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the city manager.
5. Consideration: At the hearing, the city council shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
6. Decision: The city council shall set forth in writing the reasons for the decision.
7. Costs: The city council may allocate the city council's costs for the hearing between the appellant and the city. The allocation shall be based upon facts found by the city council and stated in the city council's decision that, in the city council's opinion, warrant such allocation of costs. If the city council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the city, if the decision is overturned.

(Ord. No. 06-124-3, 6-27-2006)

1-13-15: - PUBLIC CONTRACT AMENDMENTS:

- A. Amendment Defined: An "amendment" is any change or modification of any term or condition of a contract or any addition or deletion of any term or provision of a contract. Amendments include, but are not limited to, change directives, change orders, and any addition, deletion or modification that affects the nature, quantity, degree, or scope of the goods or services or improvements to be provided under a contract or the time of performance or price or that affects any provision concerning the rights or obligations of a party.
- B. Writing and Signature Requirements: No amendment will be binding on the city unless set forth in writing and signed by an official who is duly authorized to bind the city in the manner described by the amendment.
- C.

Amendments that Increase Price: Except in connection with a contract renewal or extension, no contract may be amended to increase the contract price unless the increase is directly related to an increase in the quantity or types of goods or services to be provided, a betterment in the quality of goods or materials to be provided, or to compensate the contractor for delays occurring after the execution of the contract for which the city is responsible. Amendments that increase the contract price are further limited as follows:

1. Price Established by Contract: Amendments that increase the quantity of goods or services to be provided under the contract and for which unit prices were established in the original contract (for example, by weight, volume, itemized equipment price lists, or hourly fees) shall be permitted without limitation.
2. Price not Established by Contract: Amendments that increase the contract price and that are not described in subsection C3 of this section may not, in the aggregate, increase the total amount to be paid under the contract by more than 25 percent of the original contract price unless approved in advance by the city council.
3. Contracts Issued Under Price Based Solicitation: Except in an emergency, or under a waiver approved by the city council, a contract awarded under a solicitation method based on contract price may not be amended if the resulting contract price would exceed either of:
 - a. The limitations on amendment in this section as applicable, or
 - b. One hundred twenty-five percent of the maximum contract price for the class of contracts under which the solicitation was conducted.

- D. Time: The time of performance under a contract, or the term of an expiring contract, may not be extended by amendment except as provided in the original contract or on a temporary basis as provided in section 1-13-9 of this chapter.

(Ord. No. 06-124-3, 6-27-2006)

CHAPTER 14 - REQUESTING OF PUBLIC RECORDS

1-14-1: - PURPOSE AND COMPLIANCE:

The purpose of this chapter is as follows: a) ensure that all requests for public records are handled in a manner that complies with the Oregon public records law, ORS 192.410—192.505, as amended from time to time; b) provide reasonable measures to protect and preserve the integrity of the public records of the city of John Day (the "city"); and c) maintain office efficiency and order.

(Ord. No. 10-141-01, 2-9-2010)

1-14-2: - PUBLIC RECORDS REQUESTS; PROCEDURE:

- A. Method of Records Requests: A request for public records that are in the custody of the city must be made by submitting a written request, on the form prescribed by the city, to the following:

City of John Day

Attn: City Recorder

450 East Main Street

John Day, OR 97845

Telephone: 541-575-0028

Facsimile: 541-575-3668

A public records request may be submitted in person, by mail, by facsimile, or by electronic mail.

- B. Specificity of Records Request: All requests for public records must be dated and signed by the person (the "requestor") requesting to inspect the public records or receive a copy of the public records. In addition, in order to facilitate the public's access to public records in the city's possession, and to avoid unnecessary expenditure of city personnel time, a request to inspect public records or receive copies of public records must contain the following minimum information: 1) the requestor's name and address; 2) the requestor's telephone number or other contact information; and 3) a sufficiently detailed description of the public records requested, including the dates, subject matter, and such other information concerning the requested public records as may be necessary to enable city personnel to search for and readily locate the desired public records.

C.

City Response: The city will respond to requests to inspect public records or receive a copy of public records as soon as practicable and without unreasonable delay. The city may request additional information or clarification from the requestor for the purpose of expediting the city's response to the request. The response of the city must acknowledge receipt of the request and must include the information required under ORS 192.440(2). The city will provide the requestor an estimate of the costs of making the public records available for inspection or providing copies. The city will also advise the requestor that the requested public records will not be released without the city's receipt of the estimated fees for providing the service. Failure of the city to advise the requestor of his or her prepayment obligation will not relieve the requestor of the obligation to pay the prescribed fees.

- D. City Attorney: Routine public records requests will be handled by the city recorder. More complex public records requests and/or public records requests that may implicate the application of one or more statutory exemptions from disclosure will be submitted to the city attorney for review and evaluation. After reviewing and evaluating the public records request, the city attorney: 1) will make a determination as to whether the public records request may be processed, and 2) will inform the city recorder whether to process the public records request. If the city attorney determines that the city is unable to process the requested public records, the city attorney will provide the requestor a written response identifying the basis for the denial.
- E. Access to Public: The city will permit inspection and examination of its nonexempt public records during regular business hours in the city's offices, or such other locations as the city may reasonably designate from time to time. Copies of nonexempt public records maintained in machine readable or electronic form will be furnished, if available, in the form requested. If not available in the form requested, such public records will be made available in the form in which they are maintained. The city is not required to engage in any of the following activities: 1) create any new public records and/or customize any existing public records in response to a public records request; 2) produce "lists" of public records that are not already available in the form of a "list"; 3) create a public record to disclose the reasoning behind the city's actions or other knowledge city staff may have; and/or 4) explain or answer questions or provide legal research and analysis on or about any public records.
- F.

Public Records Request Form: A request for public records must be made by submitting a written request to the city on the form prescribed by the city. The public records request form will be made available to the public at city hall and on the city's website. The city manager may make modifications to the public records request form at any time and from time to time as the city manager deems necessary or appropriate.

- G. Certified Copies: Certified copies of nonexempt public records will be furnished upon request and receipt of payment therefor.

(Ord. No. 10-141-01, 2-9-2010)

1-14-3: - FEE SCHEDULE:

- A. Fees for Public Records: In order to recover the city's actual cost for responding to public records requests, the city adopts the fee schedule as follows:
1. Copies of Public Records; Certified Copies: Copies of public records are \$0.25 per copy for standard, letter size copies. Copies may be certified for an additional charge of cents \$3.75.
 2. Copies of Sound Recordings: Copies of sound recordings of meetings are \$25.00 per copy.
 3. Copies of Maps and Other Nonstandard Documents: The actual cost to the city for copying maps or other nonstandard size documents will be charged to the requestor.
 4. Records on Compact Disc: Copies of public records may be provided on compact disc if the record(s) are stored in the city's computer system. Discs will be provided at a cost of \$25.00 per disc and may contain as much information as the disc will hold. Due to threat of computer viruses, the city will not permit a requestor to provide discs for electronic reproduction of computer records.
 5. Records Transmitted Via Facsimile and Electronic Mail: The cost of public records transmitted by facsimile is \$2.00 for the first page and \$0.50 for each additional page, limited to a 25 page maximum, not including the cover page. The cost of public records transmitted by electronic mail is \$2.00 per electronic mail, plus \$0.25 cents (\$0.25) per page and is limited to ten MB in size per electronic mail.

6. Labor Costs: City personnel time for researching, locating, compiling, editing, summarizing, tailoring, or otherwise processing information and records will be at the hourly rate (or its equivalent) of the city personnel responsible for processing the information or public records request, which time will be charged in quarter hour increments. The city will estimate the total amount of time required to respond to the public records request and the requestor will make payment for the estimated cost in advance. If the actual time and costs are less than estimated, the excess amount paid will be refunded to the requestor. If the actual costs and time exceed the estimated time, the difference will be paid by the requestor at the time the public records are produced.
7. Delivery and Postage: The requestor will pay the actual cost for delivery of the public records, including postage or courier fees.
8. Attorney Fees: As applicable, the requestor will pay the actual attorney fees charged to the city for the cost of time spent by the attorney reviewing the public records, redacting material from the public records, and/or segregating the public records into exempt and nonexempt records. The cost of the attorney's time spent determining the application of the Oregon public records law will not be included in the "actual attorney fees."
9. Additional Charges: If a request is of such magnitude and nature that compliance will disrupt the city's normal operation, the city may impose such additional charges as are reasonably necessary to reimburse the city for its actual costs of producing the requested public records.

- B. Fees Exceeding \$25.00: The city will not charge a requestor a fee for making the public records requested available for inspection, or for providing copies of the same, in excess of \$25.00 unless the city first provides the requestor written notification of the estimated amount of the fee and the requestor confirms that the requestor wants the public body to proceed with making the public records available.
- C. Advance Payment of Fees: All estimated fees for making the public records requested available for inspection, or for providing copies of the same, must be paid before the public records will be made available for inspection or copying. If the city's estimate of

fees exceeds the actual cost, the overpayment will be refunded by the city to the requestor. Public records will not be released for inspection or copying unless the city has received payment from the requestor for providing the requested public records.

- D. Reduced Fee or Free Copies: The city may furnish copies of any public record without charge or at a substantially reduced fee if the city recorder (after consulting with the city manager) determines that the waiver or reduction of fees is in the public interest because making the public record available primarily benefits the general public.
- E. Modifications to Fee Schedule: Subsection A of this section may be modified at any time by resolution of the city council. Any change to subsection A of this section will apply as of the effective date of the resolution modifying subsection A of this section and will not apply retroactively to any public records request that has been submitted and processed prior to the effective date of such resolution.

(Ord. No. 10-141-01, 2-9-2010)

1-14-4: - ORIGINAL RECORDS:

- A. Authorization Required for Removal of Original Records: At no time will an original public record be removed from the city's files or the place at which the public record is regularly maintained except upon authorization of the city recorder.
- B. On Site Review of Original Records: If a request to review original public records is made, the city will permit such review provided that search fees are paid in advance in accordance with section 1-14-3 of this chapter. If the city recorder and/or the city manager deem necessary or appropriate, the city may require that city personnel be present during the review of any original records. The person reviewing the original records will be charged for the city personnel's time for being present while the original records are being reviewed.
- C. Unauthorized Alteration, Removal, or Destruction of Original Records: If any person attempts to alter, remove, and/or destroy any public record, the city representative will immediately terminate such person's review and will notify the city attorney.

(Ord. No. 10-141-01, 2-9-2010)

CHAPTER 15 - BACKGROUND CHECKS

1-15-1: - CRIMINAL AND DRIVING HISTORY RECORD CHECKS:

- A. Purpose: The purpose of this section is to authorize the city of John Day police department to access Oregon state police (OSP) criminal offender information through the law enforcement data system (LEDS) for applicants seeking employment and/or volunteer work, contractors and employees of contractors with the city and volunteers with nonprofit youth organizations operating within the city of John Day in accordance with OAR 257-10-025(1)(a).
- B. Procedure: All proceedings pursuant to this section shall be conducted in accordance with ORS 181.555 and OAR 257-10-025, which establishes procedures for access to criminal record information possessed by the Oregon state police (OSP) through the law enforcement data system (LEDS), and as supplemented below:
1. Parties subjected to a background check under the provisions of this section will be required to authorize the city to conduct a criminal offender information check through the OSP LEDS system.
 2. The administration department will maintain the criminal history authorization forms for those doing work on behalf of the city and request that a criminal history check be made if it is determined that this will be in the best interest of the city in filling the position.
 3. The city of John Day police department will conduct the check on the prospective employee, volunteer, contractor or employee of contractor doing business with the city and report to the administration department that the person's record indicates "no criminal and/or traffic infraction record" or "criminal and/or traffic records does not meet standards set for position."
 4. If the person's record is reported as "criminal record and/or traffic record does not meet standards set for the position," the administration department may in accordance with OAR 257-10-025(1)(c), request a written criminal history report from the OSP identification services section and pay the applicable fee for this service. The administration department may make a written criminal and/or driving history record available to the selecting official for his/her consideration in making the hiring decision.
 5. The written criminal history record on persons that are not hired or appointed as a volunteer will be retained in accordance with the requirements of OAR 166-40-080 for a period of three years and thereafter will be destroyed by shredding.

6. The criminal history record of applicants and volunteers with a criminal history that are hired or appointed will become a part of the confidential personnel file of that employee or volunteer. Access to confidential personnel files is limited to authorized persons who have an official need to access such files as sanctioned by law or regulation.
7. Applicants for employment or appointment as a volunteer or contractor that have a felony criminal history of conviction of a misdemeanor will be closely examined to determine if the person possesses the required degree of public trust and confidence. Each selection will, however, be made on an individual case by case basis; taking into account the person's qualifications, the requirements of the particular job or volunteer post applied for and the results of the criminal history check. Factors such as the age of the offender at the time of the offense, the type of offense and subsequent rehabilitation, and the public sensitivity of the position under consideration shall be taken into account in evaluating a criminal history report.
8. Hiring an applicant or appointing a volunteer or contractor with a criminal history record, will require a positive recommendation by the police department official conducting the background investigation and the approval of the administration department, after full disclosure and consideration of the criminal history of the applicant.

(Ord. No. 16-168-01, 5-24-2016)

TITLE 2 - BOARDS AND COMMISSIONS

CHAPTER 1 - PLANNING COMMISSION

2-1-1: - COMMISSION CREATED; STATUTE AUTHORITY:

A City Planning Commission for the City is established in accordance with the provisions of ORS 227.010 to ORS 227.310. Said provisions of ORS 227.010 to ORS 227.310 as the same now exist or may be hereinafter amended by the Legislature of the State of Oregon, are hereby adopted by reference and included in this Chapter in the same manner and with the same force and effect as if set out herein in their entirety.

(Ord. No. 70.3, 3-17-70)

2-1-2: - MEMBERSHIP:

The number of members of the Planning Commission, hereinafter called "Commission," shall be nine. Two of the members shall be members of the City Council, who shall be ex-officio members. One other member shall be a resident and inhabitant of the urban growth area surrounding John Day, but outside the City limits, and the other six members shall be residents and inhabitants of the City.

2-1-3: - TERMS, POSITIONS:

The terms of the members shall be for four years, except that the terms of the two ex officio Council members shall be for two years.

There is hereby created positions number one through nine inclusive for the members of the Commission. The now existing Commission shall determine by lot which member shall fill which position, except that positions number eight and nine shall be filled by the current members of the City Council who are ex-officio members of the Commission, and position number seven shall be filled by the other member not residing within the City limits.

The initial term of the member of each position shall be from the effective date hereof to the dates specified below, or until their successors are appointed and qualified, to-wit:

POSITION NO.	INITIAL EXPIRATION DATE
1	2nd Tuesday in January, 1976
2	2nd Tuesday in January, 1976
3	2nd Tuesday in January, 1977
4	2nd Tuesday in January, 1977
5	2nd Tuesday in January, 1978

6	2nd Tuesday in January, 1978
7	2nd Tuesday in January, 1979

Thereafter the member appointed for each position shall hold office for four years from the second Tuesday of January in the year in which that position is to be filled, except that positions eight and nine shall expire on the second Tuesday of January, 1977, and each two years thereafter.

2-1-4: - RESIDENCY:

Members holding positions numbered one through six shall be residents and inhabitants of the City and the member holding position number seven shall be a resident and inhabitant of the urban growth area surrounding John Day, but outside the City limits.

2-1-5: - VACANCY:

Upon a vacancy occurring in any position because of death, resignation or removal from office of any member holding that position, or because of his inability to act, the position shall be filled by appointment of the Common Council and the member so appointed shall serve the unexpired term of that position or until his successor is appointed and qualified.

(Ord. No. 75-2, 4-8-75)

TITLE 3 - BUSINESS REGULATIONS

CHAPTER 1 - BUSINESS LICENSES

3-1-1: - DEFINITIONS:

BUSINESS: Professions, trades, occupations, shops, and all and every kind of calling carried on for profit, including without limitations those soliciting business or conducting business, orders for merchandise, or professional services within the City, and is not limited to those persons having a permanent business establishment in the City.

For further classification, each business shall be determined by a product or service offered whether advertised or assumed. Entities under the same printed name shall be considered as one business.

PERSON: All domestic and foreign corporations, associations, syndicates, partnerships of every kind, joint ventures, societies and individuals transacting or carrying on business in the City.

3-1-2: - PURPOSE:

This Chapter is enacted for the purpose of providing revenue for Municipal purposes and revenue to pay for the necessary expenses of issuing the licenses and to regulate the businesses licensed and to promote the economic welfare of the community. ^[1]

(Ord. No. 86-48-1, 6-24-86)

3-1-3: - NONRESIDENT, LIABILITY FOR LICENSE:

The agent or agents of a nonresident person engaged in any business for which a license is required by this Chapter, shall be liable for the payment of the fee thereon as herein provided and for the penalties for failure to pay the same or to comply with the provisions of this Chapter to the extent and with like effect as if such agent or agents were themselves the proprietors or owners thereof.

3-1-4: - EXCEPTIONS:

- A. Nothing in this Chapter shall be construed to apply to any person transacting or carrying on business within the City which is exempt from such license fee or regulation by the City by virtue of the Constitution or laws of the United States of America or the State of Oregon.
- B. This Chapter shall not apply to:
 - 1.

Persons engaged in the business of babysitting, foster home care, nonprofessional lawn or garden care, nonprofessional janitorial or housecleaning service, yard and garage sales, craft classes.

2. Activities of charitable or nonprofit organizations, or to landlords of apartment houses or building rentals when such landlord has three units or less available for rent.
3. Any business exhibitors or participants which do business upon the premises of the Grant County Fairgrounds in conjunction with and at the time of the annual Grant County Fair.
4. Sales of animals by 4-H livestock exhibitors in any livestock show or sale conducted by a 4-H organization, or to any other business exhibitors or participants conducting any business at the place of and in conjunction with any such 4-H livestock exhibition.

C. This chapter shall not apply to any person who engages in business primarily in any other city of Grant County, Oregon, and incident thereto transacts business in John Day, and if such other city reciprocally exempts those persons licensed hereunder and who do their primary business in John Day from the requirement of being licensed to do business in such other city incident to that person's primary business in John Day. This provision shall not apply to any person occupying a business establishment in John Day, such as a branch store. If such other city in Grant County does not so reciprocate or has no business license fee requirement, this exception shall not be applicable.

(Ord. No. 75-11, 12-30-75; Ord. No. 86-48-1, 6-24-86)

3-1-5: - APPLICATION FOR LICENSE, FEES:

Every person conducting business within the city and who is subject to this chapter shall apply for a license therefor, and shall at the time of the initial license application, and any license renewal, pay a license fee of \$30.00 for the applicable license year. The amount of the license fee (and/or the additional fees described in subsections A, B, C, D, E, and F of this section) may be increased or decreased at any time by resolution of the city council. Any change in the license fee (and/or the additional fees described in subsections A, B, C, D, E, and F of this section) will apply at the time of the initial issuance of the license and/or at the renewal of the license (as the case may be) but will not apply retroactively to a license already in full force and effect. In addition to the

license fee, each of the following additional fees shall be paid at the time of the initial license application and any license renewal to the extent such additional fees are applicable (provided, however, the transfer fee shall be paid at the time provided under subsection F of this section):

- A. Additional Employees: An additional fee of \$2.50 per employee or additional active owner over one (husband and wife shall be considered as one owner) employed on May 31, 2009, for the license period of July 1, 2009 to June 30, 2010, and on May 31 preceding the commencement of each license year thereafter, whether or not such employee actually worked on that date. The owner or manager shall be considered an employee for this purpose.
- B. Apartments, Rentals: Apartment house and building rental landlords shall pay the license fee if they have four rental units and will pay an additional fee of \$2.50 for each unit over four available for rent as of May 31, 2009, for the period from July 1, 2009 to June 30, 2010, and as of May 31 preceding the commencement of each license year thereafter.
- C. Motels, Hotels: Persons operating motels or hotels shall pay an additional fee of \$2.50 per unit in excess of ten available units for rent as of May 31, 2009, for the period from July 1, 2009 to June 30, 2010, and as of May 31 preceding the commencement of each license year thereafter.
- D. Trailer Parks: Persons operating trailer parks shall pay an additional fee of \$1.00 per available space in excess of 25 as of May 31, 2009, for the period from July 1, 2009 to June 30, 2010, and as of May 31 preceding the commencement of each license year thereafter.
- E. Businesses Outside City: A person whose business is physically located outside of the city, but who conducts business in the city under the terms hereof, shall pay an additional fee of \$12.50, and shall be subject to the additional fees required in subsection A of this section, for all employees conducting business in the city.
- F. Transfer Fee: If the ownership of an existing licensed business is transferred, the new owner will pay a \$5.00 license transfer fee.

(Ord. No. 09-135-1, 5-12-2009)

3-1-6: - LICENSE YEAR:

These regulations shall become effective January 1, 1976. The license year hereunder shall be from July 1 through June 30, the first license year to commence July 1, 1976. The initial licenses for persons doing business January 1, 1976, shall be for a period of six months and at one-half of the fee set forth herein for a full license year. The license shall be renewed as of July 1, 1976, and each July 1 thereafter, so long as the person is doing business in John Day. No fee shall be refunded upon termination of the business before the expiration of the license period. Any person commencing business after January 1, 1976, shall be licensed at the time of commencing business and each July 1 thereafter. The fee to be paid for such licensing for a person commencing business shall be a full year's fee regardless of the date on which business is commenced and the fees provided for hereunder shall not be prorated for any license period shorter than one year. Also, the recorder is hereby directed to give notice of business license renewal by two publications one week apart in the newspaper of local publication, with the first publication being in the issue on or immediately preceding May 30.

(Ord. No. 86-48-1, 6-24-1986)

3-1-7: - PAYMENT IN ADVANCE:

It shall be unlawful for any person to carry on or transact any "business", as defined in this chapter, within the city without first paying in advance to the city the license fee imposed by this chapter and receiving a license to conduct such business.

(Ord. No. 75-11, 12-30-1976; amd. 1981 Code)

3-1-8: - ISSUANCE, POSTING OF LICENSE:

Application for licenses shall be obtained from the city recorder and shall be upon forms approved by the council, and upon completing and submitting such application to the recorder and paying the fee therefor, the city recorder shall issue the license, setting forth thereon the term for which such license is issued, the name of the licensee and the nature of the business conducted by the licensee. The license shall be posted in view of the public at the licensee's place of business. If not displayed, a \$25.00 fine will be imposed.

(Ord. No. 86-48-1, 6-24-1986)

3-1-9: - COMPLIANCE WITH REGULATIONS:

The issuance of a license hereunder shall not excuse the licensed person from complying with all other ordinances or regulations of the city governing that person's activities.

(Ord. No. 75-11, 12-30-1976; amd. 1981 Code)

3-1-10: - PENALTY:

Any person who conducts or carries on any business within the city and who is required to have a license therefor under the terms hereof, and who does not have such license shall be punished upon conviction in accordance with the provisions of section 1-4-1 of this code.

(Ord. No. 86-48-1, 6-24-1986)

CHAPTER 2 - SOCIAL GAMES

3-2-1: - DEFINITION:

The term *gambling* means the use or possession of any game, machine, device or contest, whether played for money, check, credit or other representative of value, in which the element of chance is controlling, in which a charge is made to participate, and in which the winner is selected primarily on the basis of chance; except that a social game conducted by authority of this chapter shall not be "gambling" as defined herein. ^[2]

(Ord. No. 75-9, 10-14-1975)

3-2-2: - LICENSE REQUIRED; FEE:

Any person allowing the play or conducting of a social game in a private club or in a place of public accommodation shall obtain from the city a license therefor prior to allowing the play or conducting of a social game. ^[3] The license fee shall be \$30.00 per year and the license period shall be from July 1 to June 30 of the immediately following year. The amount of the license fee may be increased or decreased at any time by resolution of the city council. Any change in the license fee will apply at the time of the initial issuance of the license and/or at the renewal of the license (as the case may be) but will not apply retroactively to a license already in full force and effect.

(Ord. No. 09-135-1, 5-12-2009)

3-2-3: - STATE LAW AUTHORITY:

The playing or conducting of a social game in a private club or in a place of public accommodation when no house player, house bank or house odds exist and there is no house income from the operation of the social game, is authorized in accordance with the provisions of ORS 167.117 to 167.162 and chapter 7 of the Oregon legislative assembly 1974 special session laws, section 3.

(Ord. No. 75-9, 10-14-1975)

3-2-4: - PENALTY:

Any person violating the terms of this chapter shall be punished, upon conviction, in accordance with the provisions of section 1-4-1 of this code.

(Ord. No. 75-9, 10-14-1975; amd. 1981 Code)

CHAPTER 4 - FOOD DEALERS

3-4-1: - DEFINITIONS:

The following definitions shall apply in the interpretation and the enforcement of this Chapter:

BAKERY: Any bakery where bread and pastries are prepared and handled for sale to the general public, but shall not include handlers of such items where the same are prepared outside of the County and are packaged outside of the County.

DAIRY: Any dairy where milk is handled and prepared, but shall not include dairy products that are prepared outside of the County and packaged outside of the County.

ITINERANT RESTAURANT: A restaurant operating for a temporary period in connection with a fair, carnival, circus, public exhibition or other similar gathering.

MEAT MARKET: Any market where meat is held out for sale to the general public.

RESTAURANT: Any restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain and all other public eating and drinking establishments, as well as kitchens in which food and drink are regularly and daily prepared for sale elsewhere to the public but shall not include kitchens in private boarding houses where meals and lodging or meals alone are furnished to regular boarders.

3-4-2: - COMPLIANCE WITH PROVISIONS:

It shall be unlawful from and after May 1, 1958 for any person to operate a restaurant, itinerant restaurant, dairy, meat market and bakery or to handle the products thereof within the City, who does not comply with the requirements of this Chapter.

3-4-3: - MEDICAL EXAMINATION REQUIRED:

All employees in the above described premises including owners shall, once each year, submit himself to a skin test, patch test or chest X-ray and as a result of such test shall submit a certificate signed by either the Grant County Public Health Nurse, the County Health Officer or the Health Officer of the City, or any recognized radiologist certifying that said person is free of communicable disease. One copy of said certificate shall be furnished to the employer of such person and one copy to the City Recorder. ^[5]

3-4-4: - INFECTED PERSONS PROHIBITED FROM WORKING:

Should any person so examined as above set forth be found to have active tuberculosis or any other communicable disease, he shall not return as an employee in any of the businesses herein referred to until after he shall furnish a certificate as above set forth. ^[6]

3-4-5: - REPORT VIOLATIONS:

If any person is found violating any of the provisions of this Chapter, the above named Public Health Nurse, County Health Officer or City Health Officer shall make a written report to the City and furnish the owner, proprietor, manager, agent or representative of the establishment or business where such person is working with a copy of such report.

(Ord. No. 286, 4-8-58)

3-4-6: - PENALTY:

Any person who violates any provision of this Chapter shall, upon conviction, be punished in accordance with the provisions of Section 1-4-1 of this Code.

(Ord. No. 286, 4-8-58; amd. 1981 Code)

CHAPTER 6 - MARIJUANA TAX

3-6-1: - SHORT TITLE; PURPOSE:

This chapter will be referred to as the JOHN DAY MARIJUANA TAX ORDINANCE and may be cited as such. The purpose of this chapter is to impose a tax upon the retail sale of marijuana and marijuana infused products.

(Ord. No. 14-162-03, 10-28-2014)

3-6-2: - DEFINITIONS:

For purposes of this chapter, the following terms and phrases have the meanings assigned to them below:

CITY COUNCIL: The John Day city council.

GROSS TAXABLE SALE(S): The total amount received in money, credits, property, and/or other consideration from sales of marijuana and marijuana infused products that are subject to the tax imposed by this chapter.

MARIJUANA: All parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, and/or preparation of the plant or its resin, as may be defined under the Oregon Revised Statutes, currently and as amended. The term "marijuana" does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, and/or preparation of the mature stalks (except the resin extracted therefrom); fiber, oil, and/or cake; or the sterilized seed of the plant that is incapable of germination.

OREGON MEDICAL MARIJUANA PROGRAM: The program established and administered under ORS 475.300 through 475.346, the Oregon medical marijuana act, and all policies and procedures pertaining thereto.

PERSON: Any natural person, joint venture, partnership, association, club, company, limited liability company, limited liability partnership, corporation, business, trust, organization, any other entity, and/or any group or combination acting as a unit, including, without limitation, the United States of America, the state of Oregon, and any political subdivision thereof.

PURCHASE(S) OR SALE(S): The retail acquisition and/or furnishing for consideration by any person of marijuana within city's incorporated limits, excluding the acquisition or furnishing of marijuana by a grower or processor to a seller.

REGISTRY IDENTIFICATION CARDHOLDER: A person who: a) has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and b) has been issued a registry identification card by the Oregon health authority.

RETAIL SALE(S): The transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

SELLER: Any person who is required to be licensed or has been licensed by the state of Oregon to provide marijuana or marijuana infused products to purchasers for money, credit, property, and/or other consideration.

TAX: Either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

TAX ADMINISTRATOR: City's then appointed city administrator or city manager or his or her designee.

(Ord. No. 14-162-03, 10-28-2014)

3-6-3: - TAX IMPOSED:

There is hereby levied and will be paid a tax by every seller exercising the taxable privilege of selling "marijuana" and marijuana infused products as defined under this chapter. The amount of tax will be based on the seller's gross taxable sales and will be established from time to time by resolution of the city council.

(Ord. No. 14-162-03, 10-28-2014)

3-6-4: - DEDUCTIONS:

The following deductions will be allowed against sales received by the seller providing marijuana: a) refunds of sales actually returned to any purchaser; and b) any adjustments in sales that amount to a refund to a purchaser, provided such adjustment pertains to the actual sale of marijuana or marijuana infused products and does not include any adjustments for other services furnished by a seller.

(Ord. No. 14-162-03, 10-28-2014)

3-6-5: - PAYMENT OF TAX:

- A. Tax Returns: Every seller will, on or before the last day of the month immediately following the end of each calendar quarter (April, July, October, and January), complete and file a marijuana tax return with the tax administrator on forms provided by city. The forms will specify, among other things requested by city, the total gross taxable sales and the amount of tax collected under this chapter. The tax administrator may establish shorter reporting periods for any seller if the tax administrator deems it necessary in order to ensure timely and proper collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. The tax administrator may require that the seller provide additional information in the subject tax return relevant to payment of the tax.
- B. Filing of Tax Returns: A tax return will not be considered filed until it is actually received by the tax administrator. The person required to file the return will deliver the applicable tax to the tax administrator at the office of the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark will be considered the date of delivery for determining delinquencies.

C.

Payment of Tax: At the time the tax return is filed, the full amount of the tax collected will be remitted to the tax administrator. Payments received by the tax administrator for application against existing liabilities will be credited toward the period designated by the seller under conditions that are not prejudicial to city's interest. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods. Nondesignated payments will be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the tax administrator determines that an alternative order of payment application would be in city's best interest in a particular tax or factual situation, the tax administrator may order such a change. All taxes collected by sellers pursuant to this chapter will be held in trust for the account of city until payment is made to the tax administrator. A separate trust bank account is not required in order to comply with this provision.

- D. Administrative Fee: Every seller required to remit the tax imposed under this chapter is permitted to retain five percent of all taxes due to defray the costs of bookkeeping and remittance.
- E. Record Retention: Every seller must keep and preserve in an accounting format established by the tax administrator records of all sales made by the dispensary and such other books or accounts as may be required by the tax administrator. Every seller must keep and preserve for a period of three years all such books, invoices, and other records. The tax administrator will have the right to inspect all such records at all reasonable times upon request of the tax administrator.

(Ord. No. 14-162-03, 10-28-2014)

3-6-6: - PENALTIES; INTEREST:

- A. Penalties; Late Payment: Any seller who fails to remit any portion of the tax imposed by this chapter within the time required will pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax due. Any seller who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent will pay a second delinquency penalty of 15 percent of the amount of the tax due in addition to the amount of the

tax due and the aforementioned ten percent penalty. When a shorter return period is required under subsection 3-6-5A of this chapter, penalties and interest under this section will be computed according to the shorter return period.

- B. Penalties; Fraud or Evade: If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions hereof, a penalty of 25 percent of the amount of the tax due will be added thereto in addition to the penalties provided under subsection A of this section.
- C. Interest: In addition to the penalties imposed under this chapter, any seller who fails to timely remit any tax imposed under this chapter will pay interest at the rate of one percent per month or fraction thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full. Penalties and interest imposed under the provisions of this section will become part of the tax required to be paid pursuant to this chapter.
- D. Waiver of Penalties: Any seller who fails to remit the tax levied under this chapter within the time stated in this chapter will pay the penalties and interest stated in this chapter; provided, however, the seller may petition for waiver or refund of any penalty or portion thereof. If the total penalty due does not exceed \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the tax administrator. If the total penalty due exceeds \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the city council. Upon receipt of a petition for waiver or refund of penalties as set forth herein, the tax administrator or city council may, if a good and sufficient reason is shown, waive or direct a refund of the penalty or any portion thereof.

(Ord. No. 14-162-03, 10-28-2014)

3-6-7: - FAILURE TO REPORT AND REMIT TAX; TAX ADMINISTRATOR:

If any seller fails to make, within the time provided under this chapter, any report of the tax imposed under this chapter, the tax administrator will proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator procures such facts and information as he or she is able to obtain to assist in estimating the tax due and payable by the seller, the tax administrator will proceed to determine and assess against such seller the tax, interest, and penalties provided under this chapter. In case such determination is made, the tax administrator will give a notice of the amount so assessed by

having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 3-6-8 of this chapter. If no appeal is timely filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

(Ord. No. 14-162-03, 10-28-2014)

3-6-8: - APPEAL:

Any seller aggrieved by any decision of the tax administrator with respect to the amount of tax, interest, and/or penalties due under section 3-6-7 of this chapter may appeal to the city council by filing a written notice of appeal with the tax administrator within 30 days of the serving or mailing of the tax administrator's determination of the tax due. The tax administrator will transmit the notice of appeal together with the file of the appealed matter to the city council after which the city council will fix a time and place for hearing the appeal. The city council will give the appellant not less than ten days' prior written notice of the time and place of hearing of the appealed matter.

(Ord. No. 14-162-03, 10-28-2014)

3-6-9: - REFUNDS:

- A. Claim of Refund: Whenever the amount of any tax, interest, and/or penalty has been overpaid or paid more than once, or has been erroneously collected or received by city under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury, identifies the specific grounds upon which the claim is founded and is filed with the tax administrator within one year of the date of payment. The claim will be made on forms furnished by the tax administrator. No refund will be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the tax administrator acknowledged the validity of the claim.
- B. Refund Processing: The tax administrator will have 30 days from the date of receipt of a claim of refund to review the claim and make a determination in writing as to the validity of the claim. The tax administrator will notify the claimant in writing of the tax administrator's determination. Such notice will be mailed to the address provided by the claimant on the claim form. If the tax administrator determines the claim is valid,

the claimant may, in a manner prescribed by the tax administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously collected or received. The claimant will notify the tax administrator of the claimant's choice no later than 15 days following the date the tax administrator mailed the determination. If the claimant has not notified the tax administrator of the claimant's choice within the aforementioned 15-day period and the claimant is still in business, a credit will be granted against the tax liability for the immediately following reporting period. If the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.

(Ord. No. 14-162-03, 10-28-2014)

3-6-10: - COLLECTION ACTIONS:

Any tax required to be paid by any seller under the provisions of this chapter will be deemed a debt owed by the seller to city. Any such tax collected by a seller that has not been paid to city will be deemed a debt owed by the seller to city. City may bring an action in its name to recover amounts owing under the provisions of this chapter and/or pursue any other rights and remedies available at law or in equity. In lieu of commencing legal action, city, when taxes due are more than 30 days' delinquent, may submit any outstanding tax to a collection agency. So long as city has complied with the provisions set forth in ORS 697.105, as amended, if city turns over a delinquent tax account to a collection agency, it may add to the amount owing the collection agency fees, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties, and interest owing. In addition to any penalties and interest provided under this chapter, city may recover from the seller any and all legal and administrative fees and expenses incurred by city to enforce this chapter and/or to collect any unpaid taxes, penalties, and/or interest.

(Ord. No. 14-162-03, 10-28-2014)

3-6-11: - VIOLATIONS; INFRACTIONS:

It is a violation of this chapter for any seller or other person to engage in any of the following:

- A. Fail or refuse to comply as required herein;
- B. Fail or refuse to furnish any return required to be made under this chapter;
- C. Fail or refuse to permit inspection of records;

- D. Fail or refuse to furnish a supplemental return or other data required by the tax administrator;
- E. Render a false or fraudulent return or claim; and/or
- F. Fail, refuse, and/or neglect to remit the tax to city by the due date.

Violation of subsections A, B, C, D, and/or F of this section will be considered a class C violation subject to a \$500.00 fine as specified in ORS 153.018. Filing a false or fraudulent return will be considered a class C misdemeanor subject to a prison term of no more than 30 days and/or a \$1,250.00 fine as specified in ORS 161.615 and 161.635. The remedies provided in this section are not exclusive and will not prevent city from exercising any other remedies available under law or in equity, nor will the provisions of this chapter prohibit or restrict city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance. All available remedies are cumulative and may be exercised singularly or concurrently. Each day in which a violation is caused or permitted to exist constitutes a separate offense. Each violation of this chapter will constitute a separate offense.

(Ord. No. 14-162-03, 10-28-2014)

3-6-12: - CONFIDENTIALITY:

Except as otherwise required by law, it will be unlawful for city or any officer, employee, or agent thereof to divulge, release, and/or make known in any manner any financial information submitted or disclosed to city under the terms of this chapter; provided, however, nothing in this section will prohibit disclosure under the following circumstances: a) the disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; b) the disclosure of general statistics in a form that would not reveal an individual seller's financial information; c) the disclosure of financial information in connection with city's enforcement of this chapter and/or the presentation of evidence to the court or other tribunal having jurisdiction in the prosecution of any criminal or civil claims by the tax administrator or an appeal from the tax administrator for amount due city under this chapter; and/or d) the disclosure of records related to a business's failure to report and remit the tax imposed under this chapter. The city council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5), as amended.

(Ord. No. 14-162-03, 10-28-2014)

3-6-13: - AUDITS:

The tax administrator, or any person authorized in writing by the tax administrator, may examine, during regular business hours, the books, papers, and accounting records relating to the matter of the seller's tax return after notification to the seller liable for the tax and may investigate the business of the seller in order to verify the accuracy of any return made or, if no return is made by the seller, to ascertain and determine the amount required to be paid. Seller will reimburse city for reasonable costs of an examination pursuant to this section if such examination discloses that the seller has paid 95 percent or less of the tax owing for the applicable period of examination.

(Ord. No. 14-162-03, 10-28-2014)

3-6-14: - FORMS; REGULATIONS:

The tax administrator is hereby authorized to prescribe forms and promulgate rules and regulations to: a) aid in the making of returns, and b) ascertain, assess, and collect the tax. Without otherwise limiting the generality of the immediately preceding sentence, the tax administrator may prescribe a form of report for sales and purchases and promulgate rules and regulations concerning the identification of records that sellers providing marijuana and/or marijuana infused products must keep concerning the tax imposed under this chapter.

(Ord. No. 14-162-03, 10-28-2014)

3-6-15: - SEVERABILITY; CORRECTIONS:

All pronouns contained in this chapter and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include", "includes", and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this chapter are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this chapter is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will: a) yield to a construction permitting enforcement to the maximum extent permitted

by applicable law, and b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this chapter. This chapter may be corrected at any time by order of the city council to cure editorial and/or clerical errors.

(Ord. No. 14-162-03, 10-28-2014)

3-6-16: - SAVINGS:

Nothing in this chapter affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this chapter; all city ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

(Ord. No. 14-162-03, 10-28-2014)

TITLE 4 - BUILDING REGULATIONS

CHAPTER 1 - BUILDING CODES

4-1-1: - UNIFORM BUILDING CODE ADOPTED:

The uniform building code, 1976 edition, published and copyrighted by the International Conference of Building Officials, including the appendix thereto, as amended and adopted by the state of Oregon and known as the Oregon structural specialty and fire and life safety code. ¹¹¹

is hereby adopted in its entirety, as the building code of the city and all portions of said code on file in the office of the city recorder are hereby referred to, adopted and by this reference thereto made a part of this chapter as if fully set out herein.

(Ord. No. 78-8, 2-28-1978)

4-1-2: - AMENDMENTS TO BUILDING CODE:

Section 303(b) not adopted: Section 303(b) "Plan-Checking Fees" of said uniform building code, 1976 edition, is hereby deleted and is not adopted as part of the building code of the city.

(Ord. No. 78-8, 2-28-1978)

4-1-3: - BUILDING OFFICIAL APPOINTED:

The building official shall be appointed by the mayor with the consent of the city council.

(Ord. No. 78-8, 2-28-1978)

4-1-4: - ELECTRICAL AND PLUMBING REQUIREMENTS:

The electrical wiring in all buildings hereinafter constructed or altered in the city shall comply with the minimum safety standards now or hereafter established by the electrical safety act ^[2] of the state of Oregon, or by the applicable rules and regulations of the state labor commissioner. All plumbing and sewer cesspool work hereinafter done within the city shall comply with the minimum standards now or hereafter established by the plumbing code ^[3] of the state of Oregon, or by the state and local board of health rules and regulations.

(Ord. No. 78-8, 2-28-1978)

CHAPTER 2 - FLOOD HAZARD AREAS

4-2-1: - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES:

- A. Statutory Authorization: The Legislature of the State of Oregon has in ORS 221.410 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. ^[4]
- B. Findings of Fact:
 - 1. The flood hazard areas of John Day are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
 - 2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
- C.

Statement of Purpose: It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To insure that potential buyers are notified that property is in an area of special flood hazard; and,
8. To insure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Methods of Reducing Flood Losses: In order to accomplish its purposes, this Chapter includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging and other development which may increase flood damage; and
- 5.

Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

4-2-2: - DEFINITIONS:

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meanings they have in common usage and to give this Chapter its most reasonable application.

APPEAL: A request for a review of the Administrator's interpretation of any provision of this Chapter or a request for a variance.

AREA OF SHALLOW FLOODING: A designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one foot to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

AREA OF SPECIAL FLOOD HAZARD: The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always include the letters A or V.

BASE FLOOD: The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

FLOOD or FLOODING: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM): The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY: The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

LOWEST FLOOR: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Chapter.

MANUFACTURED HOME: A structure that is transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK or SUBDIVISION: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION: Structures for which the "start of construction" commenced on or after the effective date of this Chapter.

START OF CONSTRUCTION: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it

include the installation of streets and/or walkways, nor does it include the excavation for a basement, footing, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

STRUCTURE: A walled and roofed building including a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. Before the improvement or repair is started, or
- B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- A. Any project for improvement of a structure to comply with exiting State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- B. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE: A grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

4-2-3: - GENERAL PROVISIONS:

- A. Lands to Which This Chapter Applies: This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City.
- B. Basis for Establishing Areas of Special Flood Hazard: The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of John Day," dated September

15, 1977, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study is on file at the City Hall, John Day, Oregon.

- C. Penalties for Noncompliance: No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Chapter and other applicable regulations. Violations of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction be punished in accordance with the provisions of Section 1-4-1 of this Code. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- D. Abrogation and Greater Restrictions: This Chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. Interpretation: In the interpretation and application of this Chapter, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and
 - 3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- F. Warning and Disclaimer of Liability: The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

4-2-4: - ADMINISTRATION:

4-2-4-1: - DEVELOPMENT PERMIT REQUIRED:

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 4-2-3B. The permit shall be for all structures including manufactured homes, as set forth in Section 4-2-2, "Definitions" and for all development including fill and other activities, also as set forth in the "Definitions."

Application for a development permit shall be made on forms furnished by the Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4-2-5A2; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4-2-4-2: - ADMINISTRATOR:

- A. Designation: The City Council shall designate a person to be Administrator to administer and implement this Chapter by granting or denying development permit applications in accordance with its provisions. The Council may make such designation from time to time by motion or resolution.
- B. Duties and Responsibilities: The duties of the Administrator shall include, but not be limited to:
 - 1. Permit Review:
 - a. Review of all development permits to determine that the permit requirements of this Chapter have been satisfied.
 - b.

Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

- c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 4-2-5C are met.
2. Use of Other Base Flood Data: When base flood elevation data has not been provided in accordance with Section 4-2-3B "Basis for Establishing the Areas of Special Flood Hazard," the Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer Section 4-2-5B1, "Specific Standards," and Section 4-2-5C, "Floodways."
3. Information to be Obtained and Maintained:
 - a. Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection B2 above, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement.
 - b. For all new or substantially improved floodproofed structures:
 - (1) Verify and record the actual elevation (in relation to mean sea level), and
 - (2) Maintain the floodproofing certifications required in Section 4-2-4-1C hereof.
 - c. Maintain for public inspection all records pertaining to the provisions of this Chapter.
4. Alteration of Watercourses:
 - a. Notify adjacent communities and the appropriate State of Oregon Coordinating Agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries: Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4-2-4-3 herein.

4-2-4-3: - VARIANCE PROCEDURE:

A. Appeal Board:

1. The City Council shall hear and decide appeals and requests for variances from the requirements of this Chapter.
2. The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Administrator in the enforcement or administration of this Chapter.
3. Those aggrieved by the decision of the City Council, or any taxpayer, may appeal such decision to the Circuit Court, as provided by law. ^[5]
4. In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and

flood plain management program for that area;

- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. Upon consideration of the factors of this Section and the purposes of this Chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
6. The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Conditions for Variances:

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level providing items A4a-k in this Section have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:

- a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection A4 of this Section or conflict with existing local laws or ordinances.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principal that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection B1 herein, and otherwise complies with subsection 4-2-5A1 and A2 of the "General Standards."
8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation.

4-2-5: - PROVISIONS FOR FLOOD HAZARD REDUCTION:

- A. General Standards: In all areas of special flood hazards the following standards are required:
 1. Anchoring:
 - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

- b. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring and methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
 - c. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 2. Construction Materials and Methods:
 - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- 3. Utilities:
 - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
 - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 4. Subdivision Proposals: ^[6]
 - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
 - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
 - d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
- 5. Review of Building Permits. ^[7] Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (Section 4-2-4-2B3), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding and related information where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

B. Specific Standards: In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 4-2-3B "Basis for Establishing the Areas of Special Flood Hazard" or Section 4-2-4-2B "Use of Other Base Flood Data," the following provisions are required:

- 1. Residential Construction:
 - a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
 - b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above grade.
 - (3)

Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

2. Nonresidential Construction: New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 4-2-4-2B3b.
 - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection B1b of this Section.
 - e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
3. Manufactured Housing: All manufactured homes to be placed or substantially improved within Zones A1—A30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection A1b of this Section.

C.

Floodways: Locations within areas of special flood hazard established in Section 4-2-3B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If subsection C1 above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section "Provisions for Flood Hazard Reduction."

(Ord. No. 87-52-1, 3-24-87)

CHAPTER 4 - BUILDING NUMBERING SYSTEM

4-4-1: - ASSIGNMENT OF NUMBERS:

Whenever a new building is constructed, the owner thereof shall apply to the city marshal for the assignment of a number and said city marshal is hereby authorized to assign the proper number to such house or building in accordance with the provisions of this chapter.

(Ord. No. 325, 12-8-1953)

4-4-2: - NUMBERING SYSTEM:

- A. All numbers allotted to houses and buildings north of Main Street and east of Canyon Boulevard shall be northeast numbers.
- B. All numbers allotted to houses and buildings north of Main Street and west of Canyon Boulevard shall be northwestern numbers.
- C. All numbers allotted to houses and buildings south of Main Street and east of Canyon Boulevard shall be southeast numbers.
- D. All numbers allotted to houses and buildings south of Main Street and west of Canyon Boulevard shall be southwest numbers.
- E. All numbers allotted to houses and buildings east of Canyon Boulevard on Main Street

shall be east numbers.

- F. All numbers allotted to houses and buildings west of Canyon Boulevard on Main Street shall be west numbers to Canyon Creek and northwest numbers west of Canyon Creek.
- G. All numbers allotted to houses and buildings north of Main Street on Canyon Boulevard shall be north numbers.
- H. All numbers allotted to houses and buildings south of Main Street on Canyon Boulevard shall be south numbers.
- I. All numbers allotted to houses and buildings on the south side or west side of any street shall be even numbers; and on the north side or east side of any street shall be odd numbers.
- J. All houses or buildings shall be numbered in the 100 block starting from the intersection of Main Street and Canyon Boulevard and extending from such principal streets in the various directions into the second hundred block, etc., so as to follow a uniform system insofar as the layout of streets permit.

(Ord. No. 325, 12-8-1953)

TITLE 5 - ZONING REGULATIONS^[1]

TITLE 6 - SUBDIVISION REGULATIONS^[1]

TITLE 7 - PUBLIC WAYS AND PROPERTY

CHAPTER 1 - STREETS, PUBLIC WAYS

7-1-1: - CONSTRUCTION ON STREETS BY PUBLIC UTILITIES:

- A. Council Approval Required: No public utility shall install under franchise rights or otherwise any poles, towers or other structures upon the streets or alleys of the city, except at locations approved in advance by the common council or by an official of the city designated by the common council to grant such a privilege; provided, however, that nothing in this section shall require approval for the replacement of any poles, towers or other structures.
- B.

Application for Approval: Every publication for approval of the location of poles, towers or other structures to be installed upon the streets or alleys of the city shall be filed in duplicate with the common council or with an official designated by the common council to accept such application and shall describe the installation and its proposed location on such form as is satisfactory to the city. Approval or disapproval of the project for which the application is made shall be designated by the city on the original and copy of the application, the original shall be retained by the city and the copy thereof delivered to the applicant.

- C. Violation: Any person violating any of the terms of this section shall, upon conviction, be punished in accordance with the provisions of section 1-4-1 of this code.
- D. Civil Remedies: The city shall not be restricted to a remedy of fine, but shall have all civil remedies against such public utility or corporation, including the remedy of injunction.

(1981 Code; Ord. No. 67-5, 3-14-1967)

CHAPTER 2 - SIDEWALK CONSTRUCTION

7-2-1: - RESOLUTION PROVIDING FOR SIDEWALK CONSTRUCTION:

Whenever the council shall by resolution deem it of general public necessity that a street be improved by the construction of a sidewalk thereon not to exceed one block in length, if platted as a block, or 300 feet if not platted, which sidewalk would connect with a sidewalk or sidewalks already constructed on said street or on cross streets intersecting therewith, the council shall proceed as follows in constructing said sidewalk: ¹¹¹

The council, in the same resolution, shall adopt plans and specifications prepared by the city engineer for such construction, order them filed with the city recorder, order the city recorder to publish the notice described in section 7-2-2 of this chapter, and may at the expiration of 15 days and within one year from the date of publication of the said notice proceed to construct the sidewalk, and by ordinance assess the property fronting or abutting on said sidewalk for the cost of such construction plus legal, administrative and engineering costs attributable thereto.

- A. Provided, however, that the owner of record of any property fronting or abutting the sidewalk to be constructed may file with the city recorder a written notice stating that he will begin to construct or cause to be

constructed said sidewalk fronting or abutting his property, according to the adopted plans and specifications of the council, within 15 days from the date of publication of the notice, and continue the same to completion within 60 days.

- B. When the owner has given such notice and has completed the construction of the sidewalk as herein provided, the council shall take no further action with reference to the sidewalk fronting or abutting on that particular property, nor shall any assessment be made against that particular property for any of the costs incurred by the city in initiating the construction of the sidewalk.
- C. If the owner files the notice within the 15-day period but does not begin construction within such time, or if having begun construction, does not complete construction of the sidewalk within 60 days, the council shall proceed to construct or complete construction of the sidewalk as if no notice had been given the city recorder by the property owner.

(Ord. No. 253, 7-10-1951; amd. 1979 Code)

7-2-2: - NOTICE TO PROPERTY OWNER:

The notice described in section 7-2-1 of this chapter shall set forth:

- A. A description of each lot or tract of land on which the proposed sidewalk will front or abut;
- B. The name of the record owner of each such lot or tract of land;
- C. That plans and specifications for said sidewalk construction have been adopted by the council and are on file with the city recorder;
- D. That at the expiration of 15 days from the date of publication of the notice, the council will proceed to construct the sidewalk and assess the cost thereof, including legal, administrative and engineering expenses, against the property on which the sidewalk fronts or abuts, unless:
Within a period of 15 days from the date of publication of the notice the record owner of the property files with the city recorder a written notice stating that he will begin to construct or cause to be constructed said

sidewalk according to the adopted plans and specifications within 15 days from the date of publication of the notice and continue the same to completion within 60 days from the date of publication of the notice.

The council shall direct the city recorder to send by registered mail to the record owner of each lot or tract on which the proposed sidewalk will front or abut, at his last known address, a notice containing substantially the same matters set forth above, except that it shall not be necessary to describe any property other than that owned by the person to whom the notice is mailed.

(Ord. No. 253, 7-10-1951)

7-2-3: - ASSESSMENT OF COST:^[2]

- A. In any case where the council has constructed or completed construction of a sidewalk hereunder, it shall ascertain from the city engineer the cost thereof together with legal, administrative and engineering costs attributable thereto, and shall determine the portion of said total cost to be assessed against the various lots, parcels and tracts of land on which the sidewalk fronts or abuts, and shall pass an ordinance assessing each lot, parcel or tract of land with its apportioned share of the total cost as determined by the council.
- B. When, in the opinion of the council, on account of topographical or physical conditions or other character of the work involved, or when the council otherwise believes the situation warrants it, said council may contribute what it deems a fair proportion of the cost of such sidewalk construction from general funds of the city, and the amount to be assessed to the property on which the sidewalk fronts or abuts shall be proportionately reduced.
- C. The ordinance of assessment herein provided shall direct the city recorder to enter in the docket of city liens a statement of the respective amounts assessed upon each particular lot or tract of land on which the sidewalk fronts or abuts, together with the name and address of the record owner thereof. The docket of city liens is a public writing and the original and certified copies of any matter authorized to be entered therein are entitled to the force and effect of public writing, and from the date of entry therein, of any assessment upon any lot or tract of land, the sum so entered

shall be deemed to be a tax levied and a lien thereon, which lien shall have priority over all other liens or encumbrances thereon whatsoever insofar as the laws ^[3] of the state of Oregon allow.

(Ord. No. 253, 7-10-1951)

7-2-4: - NOTICE OF ASSESSMENT REQUIRED:

The sum of money assessed for any improvement as herein provided shall not be collected until, by order of the council, not less than ten days' notice is given by the city recorder by publication in a newspaper of general circulation published in the city of the collection of the assessment. Publication of said notice in one issue of such newspaper shall be sufficient, and such notice shall contain substantially the matter required to be entered in the docket of city liens concerning such assessment and shall state the time in which such assessments must be paid or bonded. Assessments which are not paid or bonded within the time stated in the notice shall bear interest at ten percent per annum unless otherwise mandated by law.

(Ord. No. 253, 7-10-1951; amd. 1981 Code)

7-2-5: - PERSONS AGGRIEVED BY ASSESSMENT:

Any person feeling aggrieved by assessments as herein provided may, within 20 days from the passage of the ordinance levying the assessment by the council, appeal therefrom to the circuit court of the state of Oregon for Grant County. Such appeal and the requirements and formalities thereof shall be heard, governed and determined and the judgment thereon rendered and enforced so far as is practical in the manner provided for appeals from reassessments contained in Oregon Revised Statutes 223.405 et seq., as now or hereafter amended. The result of such appeal shall be a final and conclusive determination of the matter of such assessment, except with respect to the city's right of reassessment as provided herein.

(Ord. No. 253, 7-10-1951)

7-2-6: - DETERMINATION OF PROPERTY OWNER:

For the purpose of ascertaining who is the owner of any lot, tract or parcel of land or part thereof assessed for the improvements herein described, the city recorder shall take the certificate of any abstractor, abstract company or person engaged in the searching or examination of titles, who may be designated by the council for said purpose, which such

certificate shall state who is the owner of each such lot, parcel or tract of land or part thereof subject to said assessment on the date the council declared its intention to make the improvement, as shown by the records in the office of the county clerk of Grant County, Oregon.

(Ord. No. 253, 7-10-1951)

7-2-7: - STATE LAW PROVISIONS ADOPTED:

The provisions of Oregon Revised Statutes 223.205 et seq., as now or hereafter amended, which is known as the Bancroft bonding act, are hereby adopted and by reference made a part hereof.

(Ord. No. 253, 7-10-1951)

7-2-8: - VALIDITY OF ASSESSMENT; REASSESSMENT:

No assessment levied by virtue hereof shall be invalid for any of the following reasons:

- A. By reason of a failure to give in any report, in the proposed assessment, in the ordinance making the assessment, in the lien docket or elsewhere in the proceedings the name of the owner of any lot, tract or parcel of land;
- B. By a mistake in the name of any such person or the entry of a name other than the name of such owner;
- C. By reason of any error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps hereinabove specified;

unless it appears that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the council shall have power and authority to remedy and correct all such matters by suitable action and proceedings.

Whenever an assessment made by virtue hereof has been or shall be hereafter set aside, annulled, declared or rendered void or its enforcement refused by any court of this state or any federal court having jurisdiction thereof, whether directly or by virtue of any decision of such court, or when the council shall be in doubt as to the validity of such assessment, the council may make a new assessment or reassessment. Such reassessment shall be made in the manner provided by Oregon Revised Statutes 223.410 as now or hereafter amended.

(Ord. No. 253, 7-10-1951)

7-2-9: - FORECLOSURE OF DELINQUENT LIEN:

The city may proceed to foreclose as delinquent any lien which shall not have been paid within the time specified in the notice of collection of assessment as published by the city recorder as provided for foreclosure of liens in Oregon Revised Statutes 223.510 et seq., as now or hereafter amended.

(Ord. No. 253, 7-10-1951)

7-2-10: - LETTING CONTRACT FOR WORK:

In constructing a sidewalk under the provisions of this chapter, the council may let a contract for the doing of the work, or the council may provide that the work shall be done by city forces. In the event the work is to be done under contract, bids shall be received on all such work, the estimated cost of which is more than \$500.00. The contract shall be let to the lowest responsible bidder, provided that the council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory.

(Ord. No. 253, 7-10-1951)

7-2-11: - RESPONSIBILITY AND LIABILITY FOR MAINTENANCE OF SIDEWALKS:

- A. Definitions: For purposes of this section, unless the context clearly requires otherwise, the following terms have the meanings assigned to them below:

CITY MANAGER: City's city manager or his or her designee.

GOOD REPAIR: A state of being free of patent and latent defects and that sidewalk landscaping is maintained.

MAINTENANCE: Any and all activities necessary to maintain sidewalks in a safe condition and in good repair.

OWNER: The then owner of record.

SAFE CONDITION: A state of being free of snow, ice, debris, obstructions, and/or any other condition causing an actual or potential hazard to persons or vehicles using the public right of way.

SIDEWALK(S): That part of the street right of way between the lateral lines of a roadway (curb lines) and the adjacent property lines including the curbs and any landscaping and, as the context requires, that portion of the sidewalk fronting an owner's property.

B. Duty to Perform Sidewalk Maintenance:

1. An owner of real property abutting a sidewalk will maintain the sidewalk along the entire frontage of the owner's real property in good repair and safe condition at all times.
2. Maintenance will be performed in a timely manner. For purposes of snow and ice removal, removal will occur within the first six hours of daylight in commercial areas and within one day in all other areas upon any accumulation. Removed snow and ice will not be placed on the street or anywhere else where it could block runoff water or impede traffic.
3. All maintenance will be performed at the expense of the responsible owner and all maintenance will be performed in accordance with the requirements of this section and other applicable city standards. An owner will obtain all applicable permits and approvals prior to performing required maintenance.

C. Liability for Sidewalk Injuries:

1. Owners responsible for maintaining sidewalks as provided in this section will be solely liable for individuals injured because of such owner's failure to keep the sidewalk in good repair and/or safe condition and/or for any owner negligence in performing maintenance.
2. No liability will be imputed to or imposed upon city and/or its officers, employees, and/or agents because of injuries sustained by any person or property, by reason of any sidewalk not being in good repair and/or a safe condition, and/or because of any owner negligence in performing maintenance.
3. If city is required to defend any lawsuit or pay damages for any injury or loss to person or property caused by the owner's failure to keep a sidewalk in good repair and/or safe condition and/or for any owner negligence in performing maintenance, such owner will reimburse city for

damages paid as well as any costs and attorney fees incurred immediately upon city's demand. City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

D. Failure to Perform Maintenance:

1. An owner's failure to perform required maintenance or otherwise allowing a sidewalk to not be in a safe condition and/or good repair is a public nuisance and subject to abatement through the procedures for abating public nuisances set out in title 8, chapter 2 of this code.
2. Notwithstanding anything contained herein to the contrary, city may immediately remove snow and ice upon the owner's failure to comply with this section and, upon the city manager's determination of an immediate threat to public health, safety, and/or welfare, may summarily perform any required maintenance. Costs incurred by city under this section, plus an administrative fee of 20 percent, may be assessed against the owner and/or placed as a lien on the owner's property.

E. Penalty: A person who violates a provision of this section is guilty of violation punishable by a fine not to exceed \$500.00 per violation. In addition, city may pursue any other remedy available at law, including seeking a court injunction, and such remedies will be cumulative. Each occurrence of a violation or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately. In addition to any other rights or remedies provided under this section, city may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, city's reasonable attorney fees and other fees, costs, and expenses incurred by city to enforce this section.

(Ord. No. 15-167-05, 9-22-2015)

CHAPTER 3 - CITY PARKS AND PROPERTY

7-3-1: - CLOSING HOURS:^[4]

- A. Hours: The property of the City hereinafter described is hereby closed to access and use by members of the public, except as hereinafter provided, from the hours of 10:00 p.m. to midnight and from midnight to 6:00 a.m. of each day. Any person being

on said property during said closed hours shall be in violation of this Section unless such person comes within the purview of the exceptions to the prohibition as they are hereinafter set forth.

- B. Property Involved: The property to which this Section applies is that property owned by the City and known as "Gleason Park," the area of the John Day swimming pool, and the public parking areas of such park and pool areas. That property known as the Kam Wah Chung Building and adjacent parking areas is also included in the property to which this Section applies.
- C. Exceptions: It shall not be a violation of this Section if a person is on said property during prohibited hours in any of the following capacities:
 - 1. As an officer or employee of the City in connection with the performance of his functions as such employee or officer.
 - 2. In crossing over or across said property without delaying thereon solely as a means of access from a point on one side thereof to a point on another side thereof.
- D. Council Approval for Certain Uses: Notwithstanding the provisions hereof, the City Council by motion may approve the use of the property subject hereto or portions thereof during the prohibited hours, by groups or individuals, in the Council's sole discretion, and upon such terms and conditions as may be imposed by the Council in granting such permission.

(Ord. No. 75-7, 8-26-75)

CHAPTER 4 - WATER USE REGULATIONS

7-4-1: - SHORT TITLE:

This chapter will be known as the WATER USE REGULATIONS ORDINANCE and will be cited herein as this "chapter."

(Ord. No. 13-157-02, 3-12-2013)

7-4-2: - DEFINITIONS:

Unless the context requires otherwise, when used in this chapter the following terms and phrases have the meanings assigned to them below:

APPLICANT(S): A person applying for water service.

BASE CHARGE(S) OR BASE RATE(S): The charge for water service that is in addition to the consumption charges.

CITY: The city of John Day, Oregon, an Oregon municipal corporation.

CITY COUNCIL: The John Day city council.

CITY MANAGER: The city's city manager or his or her designee.

CITY SYSTEM, WATER SYSTEM, OR SYSTEM: Consists of the water source facilities and distribution system, including, without limitation, all facilities of the water system under the control of the city (including, without limitation, meters and service connections).

CONSUMPTION CHARGE(S): The charges placed on every gallon of water delivered in excess of the gallon usage applicable to the base charges.

CROSS CONNECTION(S): Any actual or potential unprotected connection or structural arrangement between the city's or customer's potable water system and any other source or system through which it is possible to introduce into any part of the city system any used or nonpotable water, industrial fluid, gas, and/or substance other than the intended potable water with which the city system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

CUSTOMER(S): A person receiving water service from the city system.

CUSTOMER SERVICE LINE(S): The pipe, valves, and facilities leading from the outlet of the meter into the premises being served.

DIRECTOR: The city's public works director or his or her designee.

FEE SCHEDULE: The rates, charges, and any related regulations established by city council resolution from time to time in accordance with this chapter.

MAIN(S): The distribution pipelines located in public or private rights of way used to supply potable water.

PERSON(S): Any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

PREMISES OR PROPERTY: Includes the subject real property and all improvements located thereon.

SERVICE CONNECTION(S): The pipe, valves, and other facilities used to supply potable water from the main through the meter but not including customer service lines beyond the meter.

TEMPORARY SERVICE: Service not intended to be permanent (such as construction sites) with expected duration(s) of six months or less.

(Ord. No. 13-157-02, 3-12-2013)

7-4-3: - APPLICATION FOR SERVICE:

- A. Application: Each applicant for water service will complete and sign an application form provided by the city which will include the date of application, location of premises, whether the applicant has been served before, the date on which service is to begin, the purpose for which service is to be used, the address for mailing or delivery of bills, the applicant's address, the class and size of water service, and such other information as the city may require. In signing the application, an applicant agrees to abide by the rules and regulations of the city for use of its water system. An application constitutes a written request for service and does not bind the city to provide water services. When application is made for water service at a non-owner occupied premises; the owner of the non-owner occupied premises will sign an agreement, in a form approved by the director, that the owner will, in the event of nonpayment or delinquency of any fee(s) or charge(s), expenses, losses, damages, and/or fines incurred by the applicant for water service, be jointly and severally liable to the city for the full payment thereof, including any late and/or penalty fees. The owner's signature on the aforementioned agreement will be deemed to constitute the owner's consent, including, without limitation, for purposes of ORS 91.255, to the city's transfer of a claim against the applicant to the owner in accordance with subsection 7-4-6F of this chapter. The city council may establish by resolution at any time and from time to time a process for collecting outstanding water charges, expenses, losses, damages, and/or fines from the responsible parties.

- B. Deposit: The director may require an applicant to provide a deposit for the receipt of water service at the time of application and/or reapplication for water service. No interest will be earned on any deposit and the amount thereof will be calculated so as to ensure that all city costs associated with the provision of water to the applicant by the city will be covered.
- C. Refund of Deposits: Deposits will be refunded to a customer if the customer has timely and fully paid all amounts due the city from the customer for a period of 12 consecutive months.
- D. Refusal of Service: If an applicant, owner, and/or occupant has previously failed to pay duly imposed charges for city water or other services, the city may refuse water service to the subject premises until such time as the city is provided adequate financial security (in a form approved by the city manager) by the applicant, owner, and/or occupant that the delinquencies will be paid.

(Ord. No. 13-157-02, 3-12-2013)

7-4-4: - ACCESS TO PREMISES:

By requesting and receiving water service from the city, every customer grants the city and its authorized agents and employees the right and ability at all reasonable times to enter onto the customer's premises to determine compliance with the city's rules and regulations concerning delivery and receipt of water service.

(Ord. No. 13-157-02, 3-12-2013)

7-4-5: - METER READING AND BILLING:

- A. Meter Readings: Meters will be read at regular intervals determined by the city.
- B. Access; General: The customer will ensure safe and efficient access to the meter and shutoff valve at all times. Whenever it is necessary to enter a building to read or work on a meter, a safe passageway, free and clear of obstruction, must be maintained by the occupant of the premises from the building/property entrance to the meter. By connecting to the city system, the customer consents to the city's (and its authorized agents and employees) removal of any obstruction(s) as necessary to maintain access to the meter.
- C.

Access to Meter Box: Customers are required to maintain a minimum of a two-foot area surrounding the meter box free of vegetation and/or other obstruction. Clear access to the meter will be from the street side in a direct path to the water meter. Failure to maintain the area will result in city personnel clearing the area to meet the city's meter reading and maintenance needs. The customer will be charged any expenses incurred by the city in clearing the area. The city will have no liability for trimming or maintaining vegetation in order for the city to read and maintain meters.

- D. Estimated Meter Read: If it is determined by the city that a meter fails to register accurately or the city determines that it is unable to read a meter, the current billing may be calculated in accordance with written policies developed by the director. Failure to read the water meter does not relieve a customer from its obligation to pay for actual or estimated water use.
- E. Customer Reread: A customer may request that the customer's meter be reread if there is a reasonable basis to conclude that the customer's bill is in error.
- F. Prorated Charges: Accounts will have the base charges prorated through the day that service is terminated (for closing accounts) or on the day that service started (for new accounts). For service/account terminations, base charges will be prorated only if the customer's water usage is below the applicable base rate water usage amount.

(Ord. No. 13-157-02, 3-12-2013)

7-4-6: - RATES AND PAYMENTS FOR SERVICES:

- A. Water Rates: The fee schedule and other water rates, charges, and fees related to water consumption from the water system will be established from time to time by resolution of the city council.
- B. Place of Payment: All payments will be made to the city at the place designated on the most recent utility bill.
- C. Bill Payment: Bills for use of water services and property of the city will be due, payable, and delinquent in accordance with the fee schedule and any related resolution(s) described under subsection A of this section. Customers will timely and fully pay all bills for use of the water services.
- D. Delinquent Accounts: The city may turn off water supply to the premises being served for which payment is delinquent after the owner(s) and/or occupant(s) (if different) is given the chance to challenge the validity of delinquency and/or the amount thereof

before the city manager consistent with the process set out in subsection 7-4-8D of this chapter. If service is terminated, it will be restored after terms of payment are arranged satisfactory to the city.

- E. Billings of Separate Meters not Combined: Each meter on a customer's premises will be considered separate and the readings of two or more meters will not be combined.
- F. Tenant Accounts: The owner of any non-owner occupied premises will immediately notify the city if the non-owner occupied premises (or any unit thereof) becomes vacant. Until the owner provides the vacancy notice required under the immediately preceding sentence, the owner will be required to pay for the water service made available and/or provided to the vacant non-owner occupied premises (or unit thereof). Prior to transferring a claim against an occupant/applicant to the owner of the premises, the city will provide notice of the delinquent status to the occupant/applicant and mail a copy of the notice of delinquency by first class mail to the last address of the owner or owner's agent that is on file with the city, within 30 days from the time the payment is due on the account. The transferred claim will be a lien against the premises served from the date the notice of delinquent status is mailed to the owner or owner's agent of the premises. The transfer does not relieve the tenant of the obligation to pay the claim.
- G. Water Charge Liens: Water service charges will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the city pertaining to the water system, and such ledger or other records will remain accessible for inspection by anyone interested to ascertain the amount of such charges against the premises. Whenever a bill for water service remains unpaid 90 days after it has been rendered, the lien thereby created may be foreclosed in a manner provided for in ORS 223.610, or in any other manner provided for by law or by city ordinance.

(Ord. No. 13-157-02, 3-12-2013)

7-4-7: - ADJUSTMENTS:

- A. Overcharge Adjustment: When the city determines a customer has been overcharged for services, the city will apply a credit to the account based on the date the error first occurred, the date the customer became responsible for the account, or a period not to exceed one year, whichever is less.
- B.

Undercharge Adjustment: When the city determines a customer has been undercharged for services, the city will bill the customer based on the date the error first occurred, the date the customer became responsible for the account, or a period not to exceed one year, whichever is less. If the date cannot be easily determined, the city will estimate the bill for a period not to exceed one year. Customers receiving a billing adjustment will be offered an opportunity to make arrangements for payment (which arrangements must be approved by the city).

- C. Adjustment for Water Loss: If it is determined that water loss occurred on the customer's side of the meter and the cause for the loss has been repaired, the city manager may adjust the customer's billing for up to 50 percent of the excess water use. The billing(s) to the customer will be adjusted in an amount based upon the water rates in effect for the loss period multiplied by the adjustment allowance. The amount, if any, will be credited to the customer's account after repairs have been completed. Request for adjustments must be made within 30 days after the date of the first billing indicating the excess use. Adjustments will not be available when the excess use appears due to a failure to repair any water leak. The city will not provide more than one adjustment per customer, per calendar year.
- D. Nonregistering Meters: The customer will be charged for water consumed while the meter is not registering. The bill will be based on an estimate of consumption using either the premises' prior use during the same season of the prior year or a comparison with the use of other similarly situated customers receiving the same class of service during a similar period and under similar circumstances and conditions, as determined by the city in its sole discretion.

(Ord. No. 13-157-02, 3-12-2013)

7-4-8: - TERMINATION OF WATER SERVICE:

- A. Customer Request: Customers may have service discontinued by notifying the city of the desired weekday date of discontinuance. Each customer must exercise its best effort to provide the city not less than 24 hours' prior notice of the customer's desire for the discontinuance. A customer requesting discontinuance will be required to pay all charges through the date of discontinuance. A customer requesting discontinuance more than two times per calendar year will be required to pay a discontinuance charge for each time the city is requested to discontinue the water service. If the

discontinuance notice described in this subsection is not given to the city, the city may require the customer to pay for all charges through the date the city determines that the premises has been vacated or the service otherwise discontinued.

B. City Initiated Termination: Water service may be terminated under any or all of the following circumstances:

1. If the utility bill is not timely paid;
2. If a deposit required is not fully paid within 72 hours of the applicant's application for service;
3. If a customer fails to comply with any city system rule or regulation;
4. If the city obtains knowledge that a leak has occurred on the customer side of the meter and the city reasonably believes that the leak may cause significant water loss or could or is causing damage to either the premises or other properties;
5. Failure to allow access to the premises for determining compliance with city rules and regulations concerning water service;
6. If service to the premises is turned on without first obtaining city's approval for the water service;
7. If an owner and/or occupant's (if different) account has become delinquent and/or the occupant vacates the premises without payment and any deposit held by the city for the premises does not cover the delinquency; and/or
8. Failure to comply with the cross connection backflow program set forth under chapter 6 of this title.

C. Notice of Service Termination: Notice of the city's intent to terminate service will be sufficient if given by either: 1) first class mail sent to the customer's address as shown in the city records (notice will be deemed complete upon deposit), and/or 2) posting a notice on the serviced premises. If the notice is posted, the notice will be deemed complete upon posting. The customer will be assessed and required to pay any applicable posting charges imposed by the city.

D. Right to Challenge Service Termination:

1. Except in those cases where the director determines a situation posing a threat to the city's system or the public health, safety, and welfare exists such that pretermination notice cannot be given without jeopardizing the

same, a customer and/or occupant (if different) will be given written notice by the city of the customer's right(s) to challenge the proposed termination prior to the date of the scheduled termination. If the owner and/or occupant elect to challenge the proposed termination, the challenge will be in writing and set out in brief the base(s) therefor and sent or delivered to the place of payment not later than five days prior to the proposed termination date. No termination of service will occur during the pendency of any challenge.

2. The city manager will conduct an informal hearing on the matter and after consideration of the material presented by the owner and/or occupant as well as material from the city, the city manager will decide whether to authorize the termination, adjust the termination, or deny the termination. The city manager's decision will be final, conclusive, and binding.

- E. Liability: The city is not liable or responsible for any consequential or other damage(s) to person(s) or property resulting from its decision or the decision(s) of its employees or agents to terminate water service to any person(s) or premises that is done consistent with or pursuant to this chapter.

(Ord. No. 13-157-02, 3-12-2013)

7-4-9: - MAINTENANCE, REPAIR, AND TESTING METERS:

- A. Customer Request: A customer may request that the city test the water meter serving the customer's premises by making application for such testing to the director. If the test shows that the water meter registers outside the American Water Works Association (AWWA) standards, the meter will be repaired or replaced at no cost to the customer. If the test shows that the water meter registers within the AWWA standards, the customer may be required to pay for the test, as determined in the city's sole discretion. A written report of the results of the test will be made available to the customer.
- B. City Initiated Test: The city may temporarily interrupt service in order to test existing meters or make necessary repairs.

(Ord. No. 13-157-02, 3-12-2013)

7-4-10: - INTERRUPTION IN SERVICE:

The city will not be liable for any actual or consequential damage(s) resulting from interruption(s) in service, shortages, and/or insufficiency of supply. Temporary shutdowns of the system (or portions thereof) may be required for improvement(s) and/or repairs. Whenever reasonably possible and if time permits, city personnel will notify any affected customers prior to the interruption of service.

(Ord. No. 13-157-02, 3-12-2013)

7-4-11: - CUSTOMER SERVICE LINES AND MAINTENANCE:

The customer is responsible for payment of costs associated with the installation of any service line(s) from the city's water meter to the customer's premises to be served. The customer service line(s) will be installed consistent with the Oregon state plumbing specialty code or other plumbing and/or specialty code(s) applicable to the particular installation. No pump equipment will be connected to a customer service line without prior written approval from the director. The customer will be responsible for maintenance and repair of the customer's service line. All leakage in the customer service line after the water meter will be the sole responsibility and expense of the customer. Leaks in the customer service line will be repaired within 15 days of detection.

(Ord. No. 13-157-02, 3-12-2013)

7-4-12: - CONNECTIONS:

- A. Requests for Connection: It is unlawful for any person to make any connection to the mains or any other portion of the city system without first obtaining permission from the city. If a request for connection to the mains or any other portion of the water system is approved by the city, the requestor will pay all applicable service connection and system development fees and charges. All service connection and system development fees and charges will be paid at the time the request for connection is approved. If the request for connection is approved, the city will make (or have made) the necessary service connections to the city system. Meter connection will be sized using the fixture count method as described in the Oregon state plumbing specialty code with a minimum size for any water meter being five-eighths/three-fourths inch. Connections will be located at such points as the city will determine appropriate. Unless required by the city, removal or relocation of a service connection will be at the

expense of the customer. The customer will bear responsibility for reconnection of the customer service line. All service connections will be made consistent with city specifications relating to size, materials, and methods of installation. No customer will extend a service line to furnish water to any residence, business, or premises on the same or neighboring tax lot(s) than the premises occupied by the customer without prior city approval.

- B. Separate Service Connection: A separate service connection is required for the following: 1) each property under separate ownership; 2) each single-family dwelling; 3) each apartment; and/or 4) each place of business. All outlying buildings used in conjunction with the property, dwelling place, and/or business or other institution may be served from the connection, as well as all buildings on the premises operating under one management.
- C. Multiple Users: In the case of a commercial or industrial property with multiple users on a single tax lot, additional service connections may be provided upon approval by the director; duplex units on a single tax lot may also qualify for multiple meters.
- D. Master Metering: The city may permit master metering of more than one water service. The owner will designate the person who will be responsible for payment of all water charges and acceptance of service for all water related notices. If any payment is not made in full when due, the city may terminate service even if partial payment is tendered by other occupants of the premises.

(Ord. No. 13-157-02, 3-12-2013)

7-4-13: - FIRE PROTECTION SERVICE CONNECTIONS:

- A. Fire Protection Service Connection: A standby fire protection service connection from a fire service line will be installed in accordance with applicable regulations and only if adequate provisions are made to prevent the use of water from such service for purposes other than fire extinguishing or testing of fire protection system. As determined by the city, the customer will pay the cost of installing the standby fire protection service connection, including, without limitation, any required backflow prevention assemblies, special water meters, and/or other devices installed solely for service to a standby fire service connection. No consumption charge will be made for water used in extinguishing fires. A person requesting a standby fire protection service connection will pay the cost of mains, fittings, valves, and all related components necessary or appropriate to supply the required flow.

- B. Unlawful Use of Fire Connection Service: If water is used from a standby fire connection service in violation of this chapter, an estimate of the amount used will be computed by the city. The user will pay for the water used based on the estimated quantity thereof, including a minimum charge based on the size of the service connection. If a second unauthorized use occurs, the user will immediately pay a penalty fee in an amount reasonably determined by the city manager.

(Ord. No. 13-157-02, 3-12-2013)

7-4-14: - TEMPORARY SERVICE:

The city may grant temporary water service during construction and for special events approved by the city. The applicant must make a request for temporary service and pay associated fees established in the city's fee schedule. The customer will use all possible care to prevent any damage to the meter, including damage which arises from freezing temperatures or to any other city loaned equipment. Duration will include from the time the equipment is installed until the time the equipment is physically returned to city control. If the meter or other equipment is damaged, the cost of making repairs and all associated charges will be borne by the applicant. Temporary connections will be disconnected and terminated within six months after installation unless the applicant requests in writing an extension of time.

(Ord. No. 13-157-02, 3-12-2013)

7-4-15: - MAIN EXTENSIONS:

- A. Main Extensions: In general, all water main line extensions will extend the entire distance between opposite boundaries of the premises to be served and will be located within the public right of way unless the city determines it necessary to construct water lines on public easements across private property. Water mains will not be smaller than eight inches unless otherwise approved by the city in advance in writing. The property owner or user will bear the cost of the water mains and all piping, fittings, valves, and other materials and equipment used.
- B. System Improvements; General: The city may construct system improvements upon the request of, and at the expense of, the property owner or user. The costs and scheduling will be determined by the city. Construction of system improvements will be by the city or a contractor approved by the director. Property owners using private funds for construction of water improvements will select an engineer or contractor for

the design of water system improvements that meet the city's requirements. The property owner or customer will be required to make advance payment for the estimated costs of plan review, administrative expenses, and other applicable fees related to the proposed project.

- C. Construction of System Improvements: All water main extensions will be constructed only by the city or by a waterworks contractor approved by the director and in accordance with the latest public works design standards adopted by the city. The city will approve all construction plans. The pipe, fittings, valves, hydrants, and other materials for the construction of the extensions will be of the size and quality, and located, as the city specifies. No main extension will be laid until the estimated costs have been deposited in an account and in a form approved by the city's finance director. Installations made by a waterworks contractor will be inspected and approved by the city to ensure compliance with plans and specifications. Backfilling of trenches prior to city approval is prohibited. Fire hydrants will be installed at locations designated by the city. After acceptance by the city, the system improvements will be the sole property of the city and maintained and operated by city personnel. If the system improvements are installed by a private owner, the property owner and the property owner's contractor will be responsible for a warranty period of not less than two years after the city's formal written acceptance for failure of either materials or workmanship in the improvements.

(Ord. No. 13-157-02, 3-12-2013)

7-4-16: - FIRE HYDRANTS AND BULK WATER:

- A. Fire Hydrants: No person other than those authorized by the director will open any fire hydrant or attempt to draw water from a fire hydrant in any manner. Violation will result in consumption and penalty fees. Any future request will be denied until all applicable fees have been paid. No person will damage or tamper with any fire hydrant. In order to obtain water from a fire hydrant, the customer must first obtain the city's prior consent for use of bulk water. The city will determine the hydrant(s) for the customer to utilize. Fire hydrants placed on private property are to be used only for fire emergencies or other uses authorized by the city. The city will designate hydrant paint colors of public hydrants. No change in hydrant color is allowed unless specifically authorized by the city.
- B.

Bulk Water: At the time the customer signs up for temporary water from a fire hydrant, the customer must supply the city with an estimate of the amount of water to be used, the name and address of the person(s) responsible for the bill, and the date and time the water will be taken from the fire hydrant. A bill will be generated from metered readings after the service is used. Charges for water furnished through a temporary service connection will be at the bulk water rate.

- C. Fire Hydrant Maintenance: 18 inches will be maintained between the ground and the center of the lowest hydrant discharge port. No change in grade (ground elevation) is allowed without approval of the city. A three-foot clear space will be maintained around the circumference of hydrants. Access from the street to the hydrant will be kept clear. Customer will be responsible for pruning or removing landscaping or other obstructions that restrict access to the fire hydrant. Upon notice from the city, the owner or customer will remove such obstruction or correct noncompliance within 14 days. If the obstruction or noncompliance is not timely corrected, the city may at any time thereafter take such steps to correct the problem and bill the cost of the corrections to the customer.

(Ord. No. 13-157-02, 3-12-2013)

7-4-17: - CROSS CONNECTIONS:

No water service connection to any premises will be installed or maintained by the city unless the water supply is protected as required by the city's cross connection and backflow program set forth under chapter 6 of this title. If such violation becomes known, the city will deny or immediately discontinue service to the premises by providing for physical disconnection of the service lines until the customer has corrected the condition(s).

(Ord. No. 13-157-02, 3-12-2013)

7-4-18: - RESPONSIBILITY FOR DAMAGE OR INJURIES:

The customer will be liable for any damage or injury resulting from the customer's failure to properly construct, maintain, repair, and/or correct conditions in the customer's service line. The customer will be liable for any damage to the city system caused by an act of the customer and/or its tenant(s), agent(s), employee(s), contractor(s), licensee(s), and/or permittee(s). Damage to the city system will include, without limitation, breaking seals and locks, tampering with meters or meter boxes, damage by heat, hot water, or steam, cross connections, traffic hazards, and

damaged curb stops, meter stops, and other service appurtenances. The customer responsible for damage or tampering may also be fined and/or have service terminated. No modification or alterations to the meter assembly will be made. The customer will be responsible for any damage to meters or meter boxes due to the unlawful modification or alteration of the city's installation.

(Ord. No. 13-157-02, 3-12-2013)

7-4-19: - PROHIBITED ACTS:

Unless authorized by the city, it is unlawful for any person to do, commit, and/or assist in committing any of the following things or acts in the city:

- A. To open or close any fire hydrant or service connection, or lift and/or remove the cover of any gate valve or shutoff;
- B. To interfere with, destroy, deface, impair, injure, and/or force open any gate, door, and/or any property appertaining to the water system;
- C. To resort to any fraudulent device or arrangement for the purpose of procuring water for a customer or others from private connections on premises contrary to the city regulations or ordinances;
- D. To interfere with or injure any reservoir, tank, fountain, hydrant, pipe, valve, and/or other apparatus pertaining to the water system, and/or to turn on or off the water in any street, hydrant, and/or other public water fixture;
- E. To make or permit to be made any connection with the main or service pipes of the water system, and/or to turn on or use the water of the system without first obtaining the city's approval;
- F. To cover or conceal from view any water valve box, service, and/or meter box;
- G. To remove any water meter that has been placed by the city, and/or to change, interfere with, and/or tamper with any meter;
- H. To construct any structure over or within ten feet of any main or service line; and/or
- I. To operate any portion of the water system or operate a system within the city using city water providing water service to users or consumers.

(Ord. No. 13-157-02, 3-12-2013)

7-4-20: - ENFORCEMENT; PENALTIES:

- A. Authority of City Manager: Unless otherwise stated herein, the city manager or his or her designee will have the exclusive authority to make any discretionary determination allowed by this chapter, including, without limitation, determinations as to approvals, authorizations, judgments, adjustments, requirements, options, and/or impacts upon the water system and/or customers thereof.
- B. City Enforcement: City will enforce the provisions of this chapter by administrative, civil, and/or criminal action as necessary to obtain compliance with this chapter. Any person violating any of the provisions of this chapter will, upon conviction, be punished in accordance with the provisions of section 1-4-1 of this code in addition to any other rights or remedies provided to city under this chapter. Each violation of this chapter will constitute a separate offense. The penalties imposed by this subsection are not exclusive and are in addition to any other remedies, civil or criminal, available to the city under applicable law.
- C. Civil Penalty; Other Relief: Any person violating any of the provisions of this chapter will be subject to a civil penalty of one thousand dollars (\$1,000.00) for each violation. Every day a violation exists will be considered a separate violation. In addition to the foregoing civil penalties, the city may seek in a court of competent jurisdiction such other and additional relief (including all legal and equitable relief and remedies) as well as recovery of its attorney fees.

(Ord. No. 13-157-02, 3-12-2013)

CHAPTER 5 - SEWER USE REGULATIONS

7-5-1: - DEFINITIONS:

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

BOD (Denoting Biochemical Oxygen Demand): The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter.

BUILDING DRAIN: That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewers, beginning five feet (1.5 m) outside the inner face of the building walls.

BUILDING SEWER: The extension from the building drain to the public sewer or other place of disposal, including, without limitation, the tap and/or connection to the sewer main.

DWELLING UNIT: One or more rooms in a building designed for occupancy by one family and not having more than one cooking facility and including duplexes and multi-family dwellings.

GARBAGE: Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

INDUSTRIAL WASTES: The liquid wastes from any nongovernmental user of publicly owned treatment works, identified in the "Standard Industrial Classification Manual," 1972, office of management and budget, as amended and supplemented under the following divisions:

- A. Division A: Agriculture, forestry and fishing.
- B. Division B: Mining.
- C. Division D: Manufacturing.
- D. Division E: Transportation, communications, electric, gas and sanitary services.
- E. Division I: Services.

A user in the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

mg/l: Milligrams per liter.

NATURAL OUTLET: Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

PERSON: Any individual, firm, company, association, society, corporation or group.

pH: The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE: The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half-inch (1.27 cm) in any dimension.

PUBLIC SEWER: A pipe or conduit for carrying sewage, consisting of all conduits owned and maintained by the city for public usage.

SANITARY SEWER: A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

SEWAGE: A combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

SEWAGE TREATMENT PLANT: Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS: All facilities for collecting, pumping, treating and disposing of sewage.

SEWER: A pipe or conduit for carrying sewage.

SHALL, MAY: "Shall" is mandatory; "may" is permissive.

SLUG: Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

STORM DRAIN (Sometimes Termed STORM SEWER): A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

SUPERINTENDENT: Superintendent of sewage works and/or of water pollution control of the city or his authorized deputy, agent or representative.

SUSPENDED SOLIDS: Solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

WATERCOURSE: A channel in which a flow of water occurs, either continuously or intermittently.

(Ord. No. 77-2, 7-12-1977; amd. Ord. No. 83-35-3, 6-14-1983; Ord. No. 13-158-03, 5-28-2013)

7-5-2: - USE OF PUBLIC SEWERS REQUIRED:

- A. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.
- C. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
- D. The user of all dwelling units, business properties, and public recreational facilities situated in the city and abutting on any street, alley, or right of way in which there is now located, or may in the future, be located, a public sanitary or combined sewer of the city, is hereby required, at his expense, to install suitable toilet facilities therein, or otherwise provide free and unrestricted access to such facilities located on the property, during times of human occupancy, unless meeting the definition of a dwelling unit, such as to be connected directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided, that said public sewer is within 300 feet (91.5 m) of the property line.
- E. The city council, at their discretion, may exclude connection to the public sewer system when a finding is made by motion or resolution that no public hazard is known to exist and the exclusion from connection to the public sewer system is necessary for the public welfare. This exemption may be modified thereafter by the city council at the council's discretion.

(Ord. No. 77-2, 7-12-1977; Ord. No. 91-67-5, 6-25-1991; Ord. No. 06-122-1, 2-28-2006)

7-5-3: - PRIVATE SEWAGE DISPOSAL:

- A.

Except as herein provided, where a public sanitary sewer is not available under the provisions of subsection 7-5-2D of this chapter, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

- B. Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the maintenance superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the maintenance superintendent. A permit fee of \$5.00 shall be paid to the city at the time the application is filed.
- C. The type, capacities, location and layout of a private sewage disposal system shall comply with all rules and regulations of the state of Oregon. ¹⁹
- D. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in subsection A of this section, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
- E. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city.
- F. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the state of Oregon.
- G. Except as provided for in this chapter, when a public sewer becomes available, the building sewer shall be connected to said sewer within 60 days from the date of availability of such public sewer.
- H. The city council, at their discretion, may exclude connection to the public sewer system when a finding is made by motion or resolution that no public hazard is known to exist and the exclusion from connection to the public sewer system is necessary for the public welfare. This exemption may be modified thereafter by the city council at the city council's discretion. An exclusion granted herein is no longer valid when a private sewage disposal system requires maintenance (exclusion for pumping), repair and/or replacement and a public sanitary sewer is available under the provisions of subsection 7-5-2D of this chapter. When an exclusion herein is no longer valid, a connection shall be made to the public sanitary sewer in accordance with the provisions of this chapter.

(Ord. No. 77-2, 7-12-1977; Ord. No. 06-122-1, 2-28-2006)

7-5-4: - BUILDING SEWERS AND CONNECTIONS:

- A. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the maintenance superintendent.
- B. There shall be two classes of building sewer permits:
 - 1. For residential and commercial service, and
 - 2. For service to establishments producing industrial wastes.

In either case, the owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Maintenance Superintendent. A permit and inspection fee as set by resolution for a residential or commercial building sewer permit and for an industrial building sewer permit shall be paid to the City at the time the application is filed.

- C. All costs and expenses incident to installation, reinstallation, repair, maintenance and connection of the building sewer shall be borne by the owner of the building served. The owner shall indemnify the City from any loss or damage that may directly or indirectly be caused to the City, including without limitation damage to the sewer system and any claims of damage by any third person, whether the owner or the City installs, reinstalls, repairs or maintains all or any portion of the building sewer.
- D. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, when so approved by the City.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the City, to meet all requirements of this Chapter.
- F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall all conform to the requirements of the Building and Plumbing Code ^[6] or other applicable rules and regulations of the City and State.
- G.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow at the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

- H. No person shall make connection of roof downspouts, exterior foundations, drains, areaway drains or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- I. The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the City or State. All such connections shall be made gas tight and watertight.
- J. The applicant for the building sewer permit shall notify the Maintenance Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Maintenance Superintendent or his representative.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

(Ord. No. 77-2, 7-12-77; Ord. No. 79-6, 3-13-79)

7-5-5: - USE OF THE PUBLIC SEWERS:

- A. No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.
- B. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the Maintenance Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Maintenance Superintendent, to a storm sewer or natural outlet.
- C. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/L or CN in the wastes as discharged to the public sewer.
3. Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

D. No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the Maintenance Superintendent that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Maintenance Superintendent will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

1. Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
- 2.

Any water or waste containing fats, gas, grease or oils whether emulsified or not, in excess of 100 mg/L or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (0 and 65 degrees Celsius).

3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Maintenance Superintendent.
4. Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions whether neutralized or not.
5. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Maintenance Superintendent for such materials.
6. Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Maintenance Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal or other public agencies with jurisdiction of such discharge to the receiving waters.
7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Maintenance Superintendent in compliance with applicable State or Federal regulations.
8. Any waters or wastes having a pH in excess of 9.5.
9. Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids such as, but not limited to, Fuller's earth, lime slurries and lime residues or if dissolved solids such as, but not limited to, sodium chloride and sodium sulfate.
 - b. Excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.
 - c.

Unusual BOD, biochemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

E. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection D above, and which in the judgment of the Maintenance Superintendent, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Maintenance Superintendent may:

1. Reject the wastes,
2. Require pretreatment to an acceptable condition for discharge to the public sewers,
3. Require control over the quantities and rates of discharge, and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of subsection J of this Section.

If the Maintenance Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Maintenance Superintendent, and subject to the requirements of all applicable codes, ordinances and laws.

F. Grease, oil and sand interceptors shall be provided when, in the opinion of the Public Works Director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living

quarters or dwelling units. All interceptors shall be of a type and capacity to meet the below listed requirements and shall be located as to be readily and easily accessible for cleaning and inspection.

1. Grease Traps: The following conditions shall be in addition to the requirements of the Plumbing Code. In all cases where a structure is used as a hotel, boardinghouse or restaurant, or where required by the Public Works Director, the owner shall provide a properly constructed grease trap through which all wastes of a greasy nature shall be drained. All grease traps shall be of a type, capacity and design approved by the Public Works Director. Traps shall be required under any of the following conditions:
 - a. Any liquid or vapor having a temperature higher than 140 degrees Fahrenheit (140 degrees Fahrenheit = 60 degrees Celsius);
 - b. Any water or waste which may contain more than 40 milligrams per liter by weight of animal or vegetable fat, oil or grease;
 - c. Any gasoline, benzene, naphtha, fuel oil, or other flammable liquid, solid or gas, or other petroleum products and derivatives;
 - d. Any garbage that has not been properly shredded;
 - e. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, hair, bristles, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operations of the sewage work.

Grease traps to collect emulsified cooking grease from commercial establishments shall be located downstream from cooking and washing facilities a sufficient distance or be sufficiently large to cool liquid at a lower temperature than 140 degrees Fahrenheit before leaving trap.

2. Grease, Oil, Sand Interceptors—Installation: Grease, oil and sand interceptors or other necessary removal facilities shall be installed on premises at the owner's expenses and liability when, in the opinion of the public works director of the city, they are necessary for the proper

handling of sewage from the premises of origination. All interceptors shall be of a type and capacity approved by the public works director and shall be located as to be readily accessible for cleaning and inspection.

3. Construction of Grease, Oil, and Sand Interceptors: Grease, oil and sand interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which, when belted in place, shall be gastight and watertight.
4. Maintenance of Grease, Oil, and Sand Interceptors: Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense and liability, in continuously efficient operation at all times.

- G. Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- H. When required by the maintenance superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the maintenance superintendent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
- I. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. (The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is

appropriate or whether a grab sample or samples should be taken. Normally, but not always BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples.)

- J. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor, by the industrial concern.

(Ord. No. 77-2, 7-12-1977; Ord. No. 95-88-8, 11-28-1995)

7-5-6: - INDUSTRIAL COST RECOVERY:

- A. All industrial users shall be required to pay that portion of the federal assistance grant under PL 92-500 allocable to the treatment of waste from such users.
- B. The system for industrial cost recovery shall be implemented and maintained according to the following requirements:
 - 1. Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total federal grant amount divided by the recovery period.
 - 2. The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.
 - 3. Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than one year after such user begins use of the treatment works.
 - 4. An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works, such as strength, volume and flow rate characteristics. As a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.
 - 5. An industrial user's share shall be adjusted when there is a substantial change in the strength, volume or flow rate characteristics of the user's wastes, or if there is an expansion or upgrading of the treatment works.
 - 6. An industrial user's share shall not include any portion of the federal grant amount allocable to unused or unreserved capacity.
 - 7. An industrial user's share shall include any firm commitment to the city of increased use by such user.

8. An industrial user's share shall not include an interest component.

- C. This requirement applies only to those features of wastewater treatment and transportation facilities which have been constructed with federal assistance administered by the U.S. Environmental Protection Agency under PL 92-500.

(Ord. No. 77-2, 7-12-1977)

7-5-7: - PROTECTION FROM DAMAGE:

No unauthorized person shall maliciously, wilfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewage works.

(Ord. No. 77-2, 7-12-1977)

7-5-8: - POWERS AND AUTHORITY OF INSPECTORS:

- A. The maintenance superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. The maintenance superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.
- B. The maintenance superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. No. 77-2, 7-12-1977)

7-5-9: - RATES AND PAYMENTS FOR SERVICES:

- A. Sewer Rates: The fee schedule and other sewer rates, charges, and fees related to use of the sewer system will be established from time to time by resolution of the city council.
- B. Place of Payment: All payments will be made to the city at the place designated on the most recent utility bill.
- C. Bill Payment: Bills for use of sewer services and property of the city will be due, payable, and delinquent in accordance with the fee schedule and any related resolution(s) described under subsection A of this section. Customers will timely and fully pay all bills for use of the sewer services.
- D. Delinquent Accounts: The city may turn off water supply to the premises being served for which payment is delinquent after the owner(s) and/or occupant(s) (if different) is given the chance to challenge the validity of delinquency and/or the amount thereof before the city manager consistent with the process set out in section 7-5-12 of this chapter. If service is terminated, it will be restored after terms of payment are arranged satisfactory to the city.
- E. Tenant Accounts: The owner of any non-owner occupied premises will immediately notify the city if the non-owner occupied premises (or any unit thereof) becomes vacant. Until the owner provides the vacancy notice required under the immediately preceding sentence, the owner will be required to pay for the sewer service made available and/or provided to the vacant non-owner occupied premises (or unit thereof). Prior to transferring a claim against an occupant/applicant to the owner of the premises, the city will provide notice of the delinquent status to the occupant/applicant and mail a copy of the notice of delinquency by first class mail to the last address of the owner or owner's agent that is on file with the city, within 30 days from the time the payment is due on the account. The transferred claim will be a lien against the premises served from the date the notice of delinquent status is mailed to the owner or owner's agent of the premises. The transfer does not relieve the tenant of the obligation to pay the claim.

(Ord. No. 13-158-03, 5-28-2013)

7-5-10: - PENALTY:

- A.

Any person found to be violating any provision of this chapter except section 7-5-7 of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

- B. Any person who shall continue any violation beyond the time limit provided for in subsection A of this section, or who violates section 7-5-7 of this chapter, shall be punished, upon conviction, in accordance with the provisions of section 1-4-1 of this code.
- C. Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation.

(Ord. No. 77-2, 7-12-1977; amd. 1981 Code)

7-5-11: - APPLICATION FOR SERVICE:

- A. Application: Each applicant for sewer service will complete and sign an application form provided by the city which will include the date of application, location of premises, whether the applicant has been served before, the date on which service is to begin, the purpose for which service is to be used, the address for mailing or delivery of bills, the applicant's address, and such other information as the city may require. In signing the application, an applicant agrees to abide by the rules and regulations of the city for use of its sewer system. An application constitutes a written request for service and does not bind the city to provide sewer services. When application is made for sewer service at a non-owner occupied premises, the owner of the non-owner occupied premises will sign an agreement, in a form approved by the director, that the owner will, in the event of nonpayment or delinquency of any fee(s) or charge(s), expenses, losses, damages, and/or fines incurred by the applicant for sewer service, be jointly and severally liable to the city for the full payment thereof, including any late and/or penalty fees. The owner's signature on the aforementioned agreement will be deemed to constitute the owner's consent, including, without limitation, for purposes of ORS 91.255, to the city's transfer of a claim against the applicant to the owner in accordance with subsection 7-5-9E of this chapter. The city council may establish by resolution at any time and from time to time a process for collecting outstanding sewer charges, expenses, losses, damages, and/or fines from the responsible parties.

- B. Deposit: The director may require an applicant to provide a deposit for the receipt of sewer service at the time of application and/or reapplication for sewer service. No interest will be earned on any deposit and the amount thereof will be calculated so as to ensure that all city costs associated with the provision of sewer service to the applicant by the city will be covered.
- C. Refund of Deposits: Deposits will be refunded to a customer if the customer has timely and fully paid all amounts due the city from the customer for a period of 12 consecutive months.
- D. Refusal of Service: If an applicant, owner, and/or occupant has previously failed to pay duly imposed charges for city sewer or other services, the city may refuse sewer service to the subject premises until such time as the city is provided adequate financial security (in a form approved by the city manager) by the applicant, owner, and/or occupant that the delinquencies will be paid.

(Ord. No. 13-158-03, 5-28-2013)

7-5-12: - RIGHT TO CHALLENGE SERVICE TERMINATION:

- A. Except in those cases where the director determines a situation posing a threat to the city's system or the public health, safety, and welfare exists such that pretermination notice cannot be given without jeopardizing the same, a customer and/or occupant (if different) will be given written notice by the city of the customer's right(s) to challenge the proposed termination prior to the date of the scheduled termination. If the owner and/or occupant elect to challenge the proposed termination, the challenge will be in writing and set out in brief the base(s) therefor and sent or delivered to the place of payment not later than five days prior to the proposed termination date. No termination of service will occur during the pendency of any challenge.
- B. The city manager will conduct an informal hearing on the matter and after consideration of the material presented by the owner and/or occupant as well as material from the city, the city manager will decide whether to authorize the termination, adjust the termination, or deny the termination. The city manager's decision will be final, conclusive, and binding.

(Ord. No. 13-158-03, 5-28-2013)

7-5-13: - SEWER CHARGE LIENS:

Sewer service charges will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the city pertaining to the sewer system, and such ledger or other records will remain accessible for inspection by anyone interested to ascertain the amount of such charges against the premises. Whenever a bill for sewer service remains unpaid 90 days after it has been rendered, the lien thereby created shall be collectible using one or more of the following procedures at the city's option:

- A. By foreclosure in a manner provided for in ORS 223.610, or in any other manner provided for by law or by city ordinance;
- B. In the manner provided by ORS 454.225 by certification and presentation to the Grant County tax assessor for assessment on the general tax roll;
- C. By an action at law; and/or
- D. By any other manner authorized by the city water use regulations ordinance (chapter 4 of this title), as now in force and hereafter amended, for the collection of water service charges.

(Ord. No. 13-158-03, 5-28-2013)

CHAPTER 6 - CROSS-CONNECTION CONTROL

7-6-1: - PURPOSE:

The purpose of this Chapter is:

- A. To protect the public potable water supply of the City from the possibility of contamination or pollution by isolating, within the customer's internal distribution system(s) or the customer's private water system(s), such contaminants or pollutants which could backflow into the public potable water system(s) and;
- B. To promote the elimination or control of existing and future cross-connections, actual or potential, between the customer's in-plant potable water system(s) and nonpotable water system(s), plumbing fixtures and industrial piping system(s) and;
- C. To comply with Oregon administrative rules for public water systems

pertaining to cross-connection control requirements.

7-6-2: - DEFINITIONS:

AWWA: American Water Works Association.

AIR GAP: The physical vertical separation between the free flowing discharge end of a potable water supply pipeline, faucet or fixture and the overflow rim of an open or nonpressure receiving vessel (tank). Physical separations must be at least twice the diameter of the inlet pipe, but never less than one inch. An approved air gap if properly maintained may be installed where the substance which could backflow is hazardous to health.

APPROVED: Accepted by the Oregon State Health Division and the City as meeting an applicable specification stated or cited in this Chapter.

AUXILIARY WATER SUPPLY: Any supply of water used to augment the supply of water obtained from the public water supply which serves the premises in question. These auxiliary waters may include, but are not limited to, wells, springs, rivers or "used waters" that have originated from the public water supply and have deteriorated in quality. These waters may be contaminated or polluted and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

BACKFLOW: The reversal of the normal direction of flow of water caused by either back pressure or back siphonage.

BACK PRESSURE: The flow of water or other liquids, mixtures or substances under pressure into the distribution pipes of a potable water supply system from any source other than the intended source. Booster pumps, elevated tanks, boilers or other means may result in a pressure greater than the supply pressure.

BACK SIPHONAGE: The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply from any source other than the intended source caused by the reduction of pressure in the public water supply system. Breaks in water mains, low water main pressure due to high demand, and firefighting are causes of back siphonage.

BACKFLOW PREVENTER: An assembly, device or means designed to prevent backflow of water, liquid, mixtures or substances. The term "approved backflow prevention assembly" shall mean an assembly that has been manufactured in full conformance with the standards established by the AWWA and approved for use in Oregon by the State Health Division.

CITY: The City of John Day, Oregon.

CITY WATER SYSTEM (also referred to as public water system): All or any part of the facilities for transporting, storing, pumping, treating, distributing or providing water to water service connections and servicing fire hydrants.

CONTAMINATION: An impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which create an actual or potential hazard to the public health through exposure to disease organisms or substances which may cause harmful physiological effects.

CROSS-CONNECTIONS: Any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems one of which contains potable water and the other nonpotable water or industrial fluids through which or because of which backflow may occur into the potable water system, whether such can be separated by a valve(s) or not. Bypass connections, jumper connections or any other plumbing arrangements in which it is possible to introduce into any part of the potable water system any polluted or contaminated water, fluid or substance are considered cross-connections.

CUSTOMER: Any person, firm or corporation granted water service by the City.

CUSTOMER LINE: The extension of pipe, valves and fittings leading from the water meter into the premises served.

CUSTOMER SYSTEM: All or any part of the network of pipes, fixtures and plumbing for distributing water on the premises being served past the utility systems meter.

DOUBLE CHECK VALVE ASSEMBLY (DCVA): An assembly of two independently acting check valves with shutoff valves on each side of the check valves and test cocks for testing the water tightness of each check valve. This assembly is designed for low hazard applications.

HAZARD: The term is derived from the evaluation of the potential risk to public health and the adverse effect of the hazard upon the public water system. The degree of hazard is referred to as low hazard, moderate hazard and high hazard.

POLLUTION: The presence of any foreign substance (organic, inorganic, radiological, physical or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which adversely and unreasonably affect such waters for domestic use.

PREMISES: Any building, structure, improvement or parcel of land which now or some future time receives water service from the City.

REDUCED PRESSURE ZONE BACKFLOW PREVENTER (RPZ): An assembly for preventing backflow which has two independent check valves, a differential relief valve located between the two check valves, two shut-off valves, one on the upstream side and one on the downstream of the check valves, and four test cocks for testing the watertightness of the check valves and the operation of the relief valve. This assembly is designed for high hazard applications.

VACUUM BREAKERS: Two types of vacuum breakers are the atmospheric type (AVB) and the pressure type (PVB). The difference between the two devices is that the pressure vacuum breaker is spring loaded to assist the device in opening. Both devices open the pipeline to atmosphere in the event of back siphonage conditions only. Neither device is approved for back pressure conditions. Their primary purpose is to protect the water system from cross-connections due to submerged inlets, such as irrigations systems and tank applications. Shut-off valves cannot be installed downstream of atmospheric devices but can be on pressure devices. The devices must be installed above the highest downstream piping.

WATER, NONPOTABLE: Water which is not safe for human consumption or which is of questionable potability.

WATER, POTABLE: Any water which according to State Health and Federal Standards is safe for human consumption.

WATER PURVEYOR: The owner or operator of the public potable water system supplying water for public use.

WATER SERVICE CONNECTION: The terminal end of the City water system to which a water meter is attached (i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system). There shall be no unprotected take offs from the service line ahead of any water meter. Service connections shall also include all other temporary or emergency water service connections from the City water system.

WATER USER: Any person using any part of the City water system.

7-6-3: - RESPONSIBILITY TO MAINTAIN WATER SYSTEM:

- A. Water System: The water system shall be considered made up of two parts: the utility system and the customer system.
- B. City to Maintain Utility System: The City shall maintain the utility system facilities which include sources, storage, transmission and distribution mains and service lines and supply potable water to the service connection (point of delivery) of quality meeting the requirements of the Oregon State Health Division and the National Safe Drinking Water Act PL 93-523 or its successor.
- C. Water User to Maintain Customer System: The customer system, including the plumbing system(s) within their premises beginning at the utility or system meter, shall be maintained by the water user, and not give cause for any contaminants or pollutants to be introduced that could backflow or back siphon into the public potable water system.
- D. Backflow Prevention Device: If, in the judgment of the City's designated representative, an approved backflow prevention assembly is required at the customer's water service connection or within the customer's private water system for the protection of the public potable water system due to the backflow/back siphonage potential of contaminants or pollutants, the City's designated representative shall give notice in writing to said customer to install such approved assembly(s) at the customer's own expense; and failure, refusal or inability on the part of the customer to install, have tested and maintain said assembly(s) shall constitute a ground for discontinuing water service to the premises until such requirements have been satisfactorily met.

7-6-4: - POLICY:

- A. Discontinuance of Service: No water service connection to any premises shall be installed or maintained by the City unless the public water supply is protected as required by State laws and regulations and the provisions of this Chapter. Service of water to any premises shall be discontinued by the City if a backflow prevention assembly required by this Chapter is not installed, tested and maintained, or if it is

found that a backflow prevention assembly has been removed, bypassed, or if an unprotected cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

- B. Inspections: The customer's system should be open for inspection at all reasonable times to authorized representatives of the City to determine whether cross-connections or other structural or sanitary hazards exists. When such a condition becomes known, the City shall deny or immediately discontinue water service to the premises by provided for a physical break in the service line until the customer has corrected the condition(s) in conformance with State and City statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.
- C. Installation of Approved Backflow Prevention Assembly: An approved backflow prevention assembly(s) for protecting the public water system shall be installed at or near the service connection or immediately inside the building being served or at the appropriate location upon the approval of the City's designated representative to premises whenever the following conditions exists:
 - 1. There is an auxiliary water supply which is or can be connected to the public water supply. Such auxiliary supply shall be considered connected to the public water supply unless there be a physical break in the piping between such separate water supply and the public water supply.
 - 2. There is piping for conveying liquids other than potable water, and where that piping is under pressure and is installed and operated in a manner which could cause a cross-connection.
 - 3. There is intricate plumbing and piping arrangements, or where entry to all portions of the premises is not readily accessible to ascertain whether or not dangerous cross-connections exist.
 - 4. There are fire protection systems connected to the public water system that are interconnected with an unapproved water supply, pipe material not approved for potable water use, where chemical additives and antifreeze compounds that may be toxic are used, or where stagnant waters that have deteriorated could backflow into the public water system.
 - 5. There are underground sprinkler/irrigation systems that could let water contaminated by weed killers and fertilizers be back siphoned (backflow) into the public water system.

6. There are sprinkler/irrigations systems that provide for chemical injection.
7. There is back siphonage potential.
8. Cross-connections or potential cross-connections exist.

7-6-5: - REQUIREMENTS:

- A. Approved Type of Assembly: All backflow prevention assembly(s) required by the Oregon State Health Division and this Chapter shall be of a type and model approved by the Health Division and are commensurate with the degree of hazard which exists.
- B. Existing Installations: All presently installed assemblies which do not meet the requirements of this Section, but were approved assemblies for the purposes described herein at the time of installation and which have been properly maintained, shall, except for the inspection and maintenance requirements under subsection 7-6-7A be excluded from the requirements of these rules so long as they satisfactorily protect the public water system. Whenever the existing assembly is moved from the present location or requires more than minimum maintenance or constitutes a hazard to public health, the unit shall be replaced by a backflow prevention assembly meeting the requirements of this Section.

7-6-6: - INSTALLATION:

- A. Assembly not to be Submerged: No part of the backflow prevention assembly shall be submerged in water or installed in a location subject to flooding. If installed in a vault or basement, adequate drainage shall be provided.
- B. Protection from Freezing: The assembly must be protected from freezing and other severe weather conditions.
- C. Manufacturer's Installation Instructions: All assemblies shall be installed according to the manufacturer's installation instructions and the "Accepted Procedure and Practice in Cross-Connection Control Manual" published by the Cross-Connection Control Committee, Pacific Northwest Section, AWWA. Only assemblies specifically approved by the City's designated representative for vertical installation may be installed vertically.
- D. Minimum Clearance Specifications: All assemblies shall be readily accessible with adequate room for maintenance and testing. The minimum clearance specified by the manufacturer's installation instructions shall be closely followed.
- E.

Installation Kept on File: Upon completion of installation, the City shall be notified and all backflow protection assemblies inspected by the City's designated representative. Each backflow prevention assembly shall be kept on file with the City. The file shall consist of date of installation, location, make, model, size and serial number of the assembly and initial test report.

- F. Pipe Joints: All pipe joints shall be restrained.
- G. Assembly Tested: The assembly shall be tested upon installation by a State of Oregon certified tester and at least annually thereafter.

7-6-7: - TESTING:

- A. Water User to Have Inspections; User's Expense: It shall be the responsibility of the customer user at any premises where backflow prevention assemblies are installed to have certified inspections and operational tests made at least once per year. In those instances where the City's designated representative deems the hazard to be great enough he may require certified inspections at more frequent intervals. These inspections and tests shall be at the sole expense of the water customer user. The customer user shall notify the City in advance when tests are to be undertaken so that an official representative of the City may witness the tests if so desired. The repair, overhaul or replacement of any assemblies found defective shall be at the sole expense of the customer user. The results of such testing shall be forwarded to the Oregon State Health Division and the City within ten days of the date of installation and 30 days of the anniversary date for the annual testing.
- B. Failure to Test Assemblies: If a water customer user fails to have such tests performed as required by subsection 7-6-7A the City may upon written notification within ten days, order such required tests be performed by a certified tester and all costs added to the customer user's water bill.

(Ord. No. 89-58-5, 5-23-89)

CHAPTER 7 - BRIDGES

7-7-1: - TITLE:

This chapter shall be known as the CITY OF JOHN DAY BRIDGE ORDINANCE and may be so cited and pleaded.

(Ord. No. 08-130-3, 4-22-2008)

7-7-2: - PURPOSE:

The purpose of this chapter is to protect public health, safety and welfare from the dangers presented by persons congregating on, loitering on or jumping from city bridges. This includes physical dangers to the persons on or jumping from the bridges, the traveling public and adjoining property owners, as well as problems associated with disorderly conduct, drinking, drugs, trespass, damage to public and private property and parking in a hazardous manner as set out in ORS 819.120 (2007).

(Ord. No. 08-130-3, 4-22-2008)

7-7-3: - DEFINITIONS:

CITY BRIDGE: Any bridge structure and the approaches thereof located in the city of John Day and within the jurisdiction of the city of John Day.

JUMP: Leaping, falling, diving, swinging or otherwise projecting oneself from a city bridge and includes, but is not limited to, bungee jumping and rope swinging.

MOTOR VEHICLE: Any vehicle which is, or is designed to be, self-propelled.

(Ord. No. 08-130-3, 4-22-2008)

7-7-4: - PROHIBITIONS:

No person shall:

- A. Jump, or cause another person to jump, leap, fall, dive, swing, or otherwise be projected, from a city bridge.
- B. Congregate on or loiter on a city bridge. This prohibition shall not apply to persons within or on a designated pedestrian walkway that is considered as part of a bridge and is separate from the motor vehicle lanes of travel. This prohibition shall also not apply to persons crossing a city bridge, provided that the persons do not congregate or loiter on the bridge.
- C.

Fish from a city bridge except within or on a designated pedestrian walkway that is constructed as part of a bridge and is separate from the motor vehicle lanes of travel.

- D. Park a motor vehicle within a posted area of a city bridge or on or near a city bridge in a manner that creates a hazard or obstruction for the traveling public under ORS 819.120 and 811.550 to 811.560 (2007) or that blocks or impedes access to private properties, utilities or to mailboxes. In addition to any penalties provided for in this chapter, vehicles that constitute a hazard or obstruction to motor vehicle traffic using the road or highway may be taken into immediate custody and removed pursuant to the provisions of ORS 819.120 (2007).
- E. Remove signs, deface, paint, destroy or otherwise damage a city bridge or appurtenances thereto.

(Ord. No. 08-130-3, 4-22-2008)

7-7-5: - ENFORCEMENT RESPONSIBILITY AND AUTHORITY:

This chapter shall be enforced by the city of John Day police department or any law enforcement agency with which the city of John Day has a cooperative law enforcement agreement.

(Ord. No. 08-130-3, 4-22-2008)

7-7-6: - VIOLATIONS:

Violation of any provision of this chapter is an infraction in accordance with the provisions of section 1-4-1 of this code.

(Ord. No. 08-130-3, 4-22-2008)

7-7-7: - PERMITTED CONDUCT:

This chapter shall not be interpreted to prohibit people from assembling together in a peaceful manner to consult for their common good; nor from instructing their elected representatives; nor for applying to the elected officials for redress of grievances.

This chapter shall not be interpreted to restrain the free expression of opinion, or restrict the right to speak, write, or print on any subject whatever; but every person shall be responsible for abuse of this right.

(Ord. No. 08-130-3, 4-22-2008)

CHAPTER 8 - SYSTEM DEVELOPMENT CHARGES

7-8-1: - PURPOSE:

The purpose of the system development charge is to impose an equitable portion of the cost of capital improvements for water and sewer facilities upon those developments that create the need for, or increase the demand on capital improvements, and to create a source of funds to assist in paying for such capital improvements.

(Ord. No. 09-140-06, 10-27-2009)

7-8-2: - SCOPE:

The system development charges imposed by this chapter are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered, a service hook up charge, or a charge for services to be rendered.

(Ord. No. 09-140-06, 10-27-2009)

7-8-3: - DEFINITIONS:

For purposes of this chapter, the following mean:

CAPITAL IMPROVEMENTS: Facilities or assets used for:

- A. Water supply, transmission, treatment, and distribution;
- B. Wastewater collection, transmission, treatment and disposal.

CITY RECORDER: The duly appointed director of the finance department, or his/her designee.

DEVELOPMENT:

- A. The first establishment of a use involving the construction or the placing of a structure upon a parcel of land, that prior to that event was not occupied by any structure; or
- B. Any construction, alteration, or change of occupancy or change of use, which increases the usage of any capital improvement or which creates the need for additional capital improvements.

IMPROVEMENT FEE: A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to section 7-8-4 of this chapter.

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

NONPROFIT CORPORATION: A mutual benefit corporation, a public benefit corporation, or a religious corporation.

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

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

PERMITTEE: The person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right of way access permit is issued.

PUBLIC WORKS DIRECTOR: The duly appointed director of the utilities department, or his/her designee.

QUALIFIED PUBLIC IMPROVEMENTS: A capital improvement that is:

- A. Required as a condition of residential approval;
- B. Identified in the plan adopted pursuant to section 7-8-8 of this chapter;
- C. Not located on or contiguous to a parcel of land that is the subject of the residential development approval;
- D.

Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related; and

- E. For purposes of this definition, "contiguous" means in a public way which abuts the parcel.

REIMBURSEMENT FEE: A fee for costs associated with capital improvements already constructed or under construction.

SYSTEM DEVELOPMENT CHARGE: A reimbursement fee, an improvement fee or a combination thereof. A "system development charge" is a separate charge which does not include reimbursement to the city for its cost of inspecting and installing connections with water and sewer facilities, which cost is recovered through other fees. A "system development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by land use decision.

(Ord. No. 09-140-06, 10-27-2009)

7-8-4: - SYSTEM DEVELOPMENT CHARGE ESTABLISHED:

- A. System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.
- B. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all development within the city, upon the act of making a connection to the city water or sewer system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the city.

(Ord. No. 09-140-06, 10-27-2009)

7-8-5: - METHODOLOGY:

- A.

The methodology used to establish the reimbursement fee shall consider the cost of the existing facility or facilities, prior contributions by existing users, the value of unused capacity, ratemaking principles employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of existing facilities, based upon their demand for service.

- B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by the council by resolution.

(Ord. No. 09-140-06, 10-27-2009)

7-8-6: - AUTHORIZED EXPENDITURES:

- A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to section 7-8-8 of this chapter.
- C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

(Ord. No. 09-140-06, 10-27-2009)

7-8-7: - EXPENDITURE RESTRICTIONS:

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

(Ord. No. 09-140-06, 10-27-2009)

7-8-8: - WATER AND SEWER SYSTEM DEVELOPMENT CHARGE STUDY:

The council hereby adopts and approves the water and sewer system development charge study dated August 2009. The plan shall:

- A. List the capital improvements that may be funded with improvement fee revenues;
- B. List the estimated cost and time of construction of each improvement; and
- C. Describe the process for modifying the plan.

(Ord. No. 09-140-06, 10-27-2009)

7-8-9: - COLLECTION OF CHARGE:

- A. The system development charge is payable upon issuance of:
 - 1. A building permit;
 - 2. A development permit;
 - 3. A permit to connect to the water system; or
 - 4. A permit to connect to the sewer system.
- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. Collection of the applicable system development charge by the city recorder shall be initiated by one of the following events:
 - 1.

Upon issuance of a permit which allows expansion of an existing building or development of an existing parcel, in accordance with subsection B of the definition of "development" in section 7-8-3 of this chapter.

2. When a request is made for water or sewer service, or when a connection to the water or sewer system of the city is made, whichever event occurs first.
- E. The applicable system development charge shall either be paid in full at the time of occurrence of one of the events outlined in subsection D of this section, or pursuant to a monthly installment plan approved by the city recorder. Persons who desire to pay on an installment basis shall submit an application of a form provided by the city recorder. The maximum period for any installment payment plan shall not exceed 12 months. The installment agreements shall provide that no interest charge will be imposed as long as no default in payment occurs, and that a late charge at the rate of ten percent (10%) per annum will be imposed upon any past due installment.
- F. No permit shall be issued for water or sewer service, nor shall any water or sewer connection be allowed, until the applicable system development charge has been paid in full, or the public works director has received a copy of an installment payment agreement signed by the applicant and the city recorder, or unless an exemption has been granted pursuant to section 7-8-11 of this chapter.

(Ord. No. 09-140-06, 10-27-2009)

7-8-10: - DELINQUENT CHARGES:

When, for any reason, the system development charge has not been paid, the city recorder shall follow the established administrative procedures to collect any unpaid system development charges.

(Ord. No. 09-140-06, 10-27-2009)

7-8-11: - EXEMPTIONS:

Existing water and sewer connections, to the extent of current service levels as of the effective date hereof, are exempt from a system development charge. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the state uniform

building code, are exempt from all portions of the system development charge. An alteration, addition, replacement or change in use that does not increase the use of a public improvement facility is exempt from all portions of the system development charge.

(Ord. No. 09-140-06, 10-27-2009)

7-8-12: - ANNUAL UPDATES FOR INFLATION:

ORS 223.304(8)(b) allows that periodic adjustments to system development charges to reflect cost increases is allowed and not considered a change in the systems development charges methodology. Therefore, the city council of the city of John Day finds that all systems development charges levied by the city of John Day may be automatically adjusted by resolution effective July 1, of each year, commencing July 1, 2010, for:

- A. Changes in the cost of materials, labor or real property applied to projects or project capacity as set forth on capital improvement plan(s) or public facility plan(s) adopted by resolution of the city council; or
- B. The application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
 - 1. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
 - 2. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
 - 3. Shall be adopted from time to time by resolution of the city council.

(Ord. No. 09-140-06, 10-27-2009)

7-8-13: - CREDITS:

- A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated; and if it is less than the system development charge for the use that will result from the development, the difference between the system development for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development

charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.

- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.
- C. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.
- D. When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsections C and D of this section, when establishing a methodology for a systems development charge, the city may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.
- F. Any nonresidential development which results in the creation of new and permanent full time equivalent jobs, shall be entitled to receive a credit toward the applicable system development charge, which credit shall be calculated at the rate of one percent for each new, permanent full time equivalent position created by the development. Eligibility for this credit shall be subject to verification by the city

recorder within 12 months of occupancy or startup of the development. Only nonresidential development occurring upon property located within the city limits shall be eligible for this credit.

- G. The city council shall have the right to grant a credit not to exceed 50 percent of the applicable system development charge, for any development project submitted by a nonprofit corporation or any agency or subdivision of the federal, state or local government. Only development occurring upon property located within the city limits shall be eligible for this credit.
- H. Credits shall not be transferable from one development to another. Credits shall not be transferable from one type of system development charge to another. Credits shall be used within ten years from the date the credit is given.

(Ord. No. 09-140-06, 10-27-2009)

7-8-14: - NOTICE:

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 45 days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least 30 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the city.
- B. The city may periodically delete the names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wished to remain on the notification list.

(Ord. No. 09-140-06, 10-27-2009)

7-8-15: - SEGREGATION AND USE OF REVENUE:

- A.

All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. The portion of the system development charge calculated and collected on account of a utility system shall be used for no purpose other than those set forth in section 7-8-6 of this chapter.

- B. The city recorder shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each utility and the projects funded from each account.

(Ord. No. 09-140-06, 10-27-2009)

7-8-16: - APPEAL PROCEDURE:

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city manager, or his designee, describing with particularity the decision of the city recorder or public works director, and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the city recorder or public works director under this chapter must be filed within 30 days of the date of the decision.
- C. After providing notice to the appellant, the council shall determine whether the city recorder's or public works director's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decision. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.
- D. A legal action challenging the methodology adopted by the council pursuant to section 7-8-5 of this chapter shall not be filed later than 60 days after the adoption. The decision of the council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

(Ord. No. 09-140-06, 10-27-2009)

7-8-17: - PROHIBITED CONNECTION:

No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid.

(Ord. No. 09-140-06, 10-27-2009)

7-8-18: - PENALTY:

Violation of section 7-8-15 of this chapter is punishable by a fine not to exceed \$500.00.

(Ord. No. 09-140-06, 10-27-2009)

TITLE 8 - HEALTH AND SANITATION

CHAPTER 1 - HEALTH REGULATIONS

8-1-1: - STATE REGULATIONS ADOPTED:

The rules and regulations of the state health division are hereby adopted and made the health code of the city; provided, however, the city council may from time to time promulgate such further rules as may be both necessary and proper. ⁽¹⁾

(1981 Code)

8-1-2: - PENALTY:

Any person violating any quarantine or rules of the state health division or of the city relating to contagious disease or any matter of public health, or who shall permit any child or minor under his control to violate the same shall, upon conviction, be punished in accordance with the provisions of section 1-4-1 of this code.

(1981 Code)

CHAPTER 2 - NUISANCES

8-2-1: - OVERVIEW:

- A. Short Title: This chapter will be known as the NUISANCE ORDINANCE and will be cited and referred to herein as this "chapter."
- B. Scope: The provisions of this chapter are intended to protect the public health, safety, and general welfare by: 1) regulating existing buildings and structures, residential and nonresidential, and existing premises, 2) establishing minimum requirements and standards for buildings, structures, and premises for protection from the elements, life safety, other hazards, and for safe and sanitary maintenance, 3) fixing the responsibility of owners and occupants, and 4) administration, enforcement, and penalties.
- C. Intent: The provisions of this chapter will be construed to secure and ensure public health, safety, and welfare insofar as they are affected by the continued occupancy and maintenance of buildings, structures, and premises. Existing buildings, structures, and premises that do not comply with the provisions of this chapter will be altered or repaired to provide a minimum level of health, safety, and maintenance as required herein.
- D. Application of Other Codes: Nothing in this chapter will be construed to relieve a person from complying with any federal, state, or local laws, regulations, and/or ordinances, including any other provisions of this code, or the requirement to obtain all necessary permits and approvals.
- E. Responsibility:
 - 1. Unless otherwise provided, the health officer or city designee will be responsible for the enforcement of all of the provisions of this chapter. The health officer or city designee may appoint such officers, technical assistants, inspectors, and other employees as will be necessary for the administration of this chapter. The health officer or city designee is authorized to designate an employee as deputy who will exercise all the powers of the health officer or city designee during the temporary absence or disability of the health officer or city designee.
 - 2. Where conditions or prohibitions under this chapter are regulated by the building code, the building official will be responsible for making such determination and taking appropriate action as provided therein.
- F.

Modifications: Where there are extreme hardships involved in carrying out the provisions of this chapter, the health officer or city designee will have the right to vary or modify such provisions upon application of an owner or occupant, provided that the intent of the law is observed and that the public health, safety, and welfare is assured.

G. Failure to Obey Order of Health Officer or City Designee:

1. It will be unlawful for any person to refuse to obey an order by the health officer or city designee acting in the discharge or apparent discharge of official duty.
2. It is no defense to a prosecution for a violation of this subsection G that the health officer or city designee lacked legal authority to issue the order, provided the health officer or city designee was acting under color of official authority.

(Ord. No. 15-165-03, 6-9-2015)

8-2-2: - DEFINITIONS:

As used in this chapter, the following terms have the meanings assigned to them below:

ABANDONED STRUCTURE(S): A vacant building or structure that is an attractive nuisance.

ASH(ES): The residue of the combustion of solid fuels.

ATTRACTIVE NUISANCE(S): Buildings, structures, and/or premises that are in an unsecured, derelict, and/or dangerous condition so as potentially to constitute an attraction to minors, vagrants, criminals, and/or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing an unlawful act.

BOARDED: The securing of an unoccupied building or structure against entry by the placement of material such as plywood, boards, or other similar material over openings that are designed or intended for windows or doors, where the materials are visible off the premises and where the materials are not lawfully or customarily installed on a building or structure that would be occupied.

BUILDING(S): Any structure designed for habitation, shelter, storage, trade, manufacture, business, education, or other similar purposes.

BUILDING CODE: The specialty building, plumbing, electrical, structural, and other codes

applicable in the city of John Day.

BUILDING OFFICIAL: The administrator of the building code or the administrator's designee (e.g., Grant County).

BULK SOLID WASTE(S): Discarded bedding, mattresses and furniture, junk, yard debris, uprooted tree stumps, demolition or construction debris, or other nonputrefactive and nonhazardous materials not placed in a container, or too large to be placed in a container.

CITY: The city of John Day, an Oregon municipal corporation.

CITY COUNCIL: City's elected legislative body.

CITY DESIGNEE: The city manager or his or her designee.

CITY MANAGER: City's city manager or his or her designee.

CODE: City's municipal code and ordinances, including, without limitation, the city of John Day development code.

CONTAINER(S): Any vessel approved by the city manager for the storage of solid waste.

CORROSIVE SUBSTANCE(S): Any salt substance or other substance which has a corrosive effect.

DERELICT STRUCTURE(S): A building or structure that is unfit for human habitation, or poses an incipient hazard, or is detrimental to public health, safety, or welfare, as a result of one or more of the following conditions: a) is unoccupied and unsecured; b) is partially constructed; c) is an abandoned structure or attractive nuisance; d) is in condition of deterioration; and/or e) has an infestation of pests.

DETERIORATION: A lowering in the quality, condition, or appearance of a building or structure, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, neglect, excessive use, or lack of maintenance.

DRY VEGETATION: Dry vegetation, including, without limitation, grass, weeds, and shrubs, that may be a fire hazard.

DWELLING UNIT(S) OR DWELLING(S): A single unit within a building providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. As used in this chapter, "dwelling unit" or "dwelling" includes, without limitation, as the context requires, single-family dwellings, duplexes, triplexes, condominiums, mobile homes, multi-family dwellings, and single units therein.

EXTERMINATION: The control, elimination, and removal of pests by: a) eliminating harborage places, b) removing or making inaccessible materials that serve as food, c) poison spraying, fumigating, or trapping, or d) any other pest elimination method approved by the health officer or city designee.

FOOD WASTE(S): All waste from meats, fish, shellfish, grains, fruits, and vegetables which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. "Food waste(s)" includes, without limitation, excess, spoiled, or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. "Food waste(s)" does not include: a) large amounts of oils and meats which are collected for rendering, fuel production, or other reuse applications, or b) dead animals not intended for human consumption or animal excrement.

FOWL: A duck, goose, chicken, pigeon, parrot, or other like bird.

GARBAGE: All classes of putrefactive and easily decomposable animal and vegetable matter, including, without limitation, wastes produced from the handling and preparation of food, and containers originally used for foodstuffs.

HAZARDOUS THICKET(S): Vines or other thickets that: a) conceal trash, debris, or junk, b) create a harborage for people involved in criminal activity or for products used for unlawful activity, or c) encroach upon the public right of way, or private property of another, in a manner that may be hazardous.

HEALTH OFFICER OR CITY DESIGNEE: The city manager.

HEARINGS OFFICER: The person or persons appointed by the city council to serve as the hearings officer.

IMMINENT HAZARD(S): Any condition of deterioration that places public health, safety, and/or welfare in high risk of peril, when the peril is immediate, impending, and/or on the point of happening.

INCIPIENT HAZARD(S): Any condition that can become an imminent hazard if further deterioration is allowed to occur.

INDOOR FIXTURE(S): Any item that is designed for use indoors or otherwise protected from environmental elements, including, without limitation, heating, plumbing, and electrical fixtures.

INDOOR FURNISHING(S): Any item that is designed to be used indoors or otherwise protected from environmental elements, including, without limitation, upholstered furniture, indoor appliances, and indoor carpet.

INFESTATION(S) OR INFESTED: The presence of pests in large numbers that are harmful or bothersome within or adjacent to a building or structure or upon a premises.

JUNK: Articles of personal property that have outlived their usefulness in their original form, or articles of personal property that have been discarded and are no longer used for their manufactured purpose, regardless of value. As used in this chapter, the term "junk" includes, without limitation, the following: a) derelict motor vehicle (i.e., any used motor vehicle without a vehicle license or with an expired license); b) neglected motor vehicle (i.e., any motor vehicle that is missing critical parts required for the normal and legal operation of the vehicle, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires); c) wrecked motor vehicle, or part thereof (i.e., any motor vehicle that is dismantled or partially dismantled, or has a broken or missing window or windshield, or lacks a wheel or tire); d) machinery or parts thereof that are inoperative, worn out, or in a state of disrepair; e) appliances or parts thereof that are inoperative, worn out, or in a state of disrepair; f) worn out or dilapidated indoor fixtures or indoor furnishings, or parts thereof; g) bulk solid waste; and/or h) solid waste items that are of a type or quantity inconsistent with normal and usual use such as wood, metal, scrap, and other similar items.

KEEP: To provide food or shelter of a permanent or semipermanent nature.

LEGALLY OCCUPIED: The use and occupancy of a premises for a purpose authorized by law. A premises will be considered legally occupied for the purposes of this chapter if the premises is maintained in good order, is temporarily vacant, and the owner is seeking, in good faith, to let the premises.

LET FOR OCCUPANCY OR LET: To permit, to provide, or to offer possession or occupancy of a dwelling unit, building, structure, or premises pursuant to a lease, permit, agreement, or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

LIVESTOCK ANIMAL(S): A horse, cow, mule, sheep, goat, hog, potbellied pig, or any variation of pigs, or other like animal, but not including a dog, cat, household pet, rabbit, or other like animal.

NOXIOUS VEGETATION:

- A. Weeds more than ten inches in height,
- B. Grass more than ten inches in height,
- C. Dead dry vegetation or rank vegetation,
- D. Poison oak, poison hemlock, or poison ivy,
- E. Hazardous thickets,
- F. All noxious weeds, regardless of height, as defined by the then current Grant County noxious weeds list, and/or
- G. Other rank, noxious, and/or dangerous vegetation that is a health hazard, fire hazard, or traffic hazard because it impairs the view of a public right of way (including, without limitation, all traffic signs and signals, street light and/or name signs), obstructs the access of the public right of way, or otherwise makes use of the public right of way hazardous and/or creates a fire hazard to the public right of way and/or other property.

This definition will not include agriculture crops, endangered riparian grasses that have not come to seed, and wetland grasses that are neither a fire nor a traffic hazard.

OCCUPANCY: The purpose for which a building, structure, or premises is used or intended to be used.

OCCUPANT(S): Any person living or sleeping in a building or structure, or having possession of a space within a building or structure or possession of a premises.

OWNER(S):

- A. The person recorded in the official records of the state, county, or city as holding title to premises, and that person's agent,
- B.

Any person who has purchased or otherwise acquired a premises but whose ownership is not yet reflected in the official records of the state, county or city,

- C. A trustee, executor, administrator, guardian, or mortgagee in possession and having control of the premises,
- D. A person who has care and control of a premises in the case of the absence or disability of the person holding title thereto, and/or
- E. A lessee or tenant in possession.

PARTIALLY CONSTRUCTED: An occupied or vacant building or structure, or portion thereof, that has been left in a state of partial construction for more than six months, or that has not been completed prior to the expiration of any building permit.

PERSON(S): A natural person, partnership, corporation, limited liability partnership, limited liability company, cooperative, governmental entity, association, or other entity in law or fact.

PEST(S): Animals detrimental to humans or human concerns including, without limitation, insects, rodents, rats, or vermin.

PREMISES: A lot, or parcel of land, including any buildings or structures thereon.

PRIVATE PLACE: Any place other than a public place.

PUBLIC PLACE: A building, way, place, or accommodation, whether publicly or privately owned, open and available to the general public.

RANK VEGETATION: Any vegetation existing in a state of uncontrolled growth or without commonly recognized vegetation maintenance or management practices applied.

REMEDIATION: The elimination or correction of a condition, including, without limitation, repair, replacement, restoration, or removal.

RUBBISH: Worthless, discarded material, including, without limitation, cardboard, plastic, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily may accumulate on a premises.

SKILLED MANNER: Executed in a proper manner, consistent with generally accepted standards of construction and maintenance (e.g., generally plumb, level, square, in line, undamaged, without marring adjacent work).

SOLID WASTE(S): All waste, in solid, semisolid, or liquid form, including, without limitation, the following: a) garbage, rubbish, trash, ashes, street refuse, wastepaper, corrugated material, and cardboard; b) commercial, industrial, demolition, and construction wastes; c) food waste; d) small dead animals; e) infectious waste as defined in Oregon Revised Statutes 459.386(4); and f) other wastes. As used in this chapter, "solid waste(s)" does not include sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service or materials that are used for fertilizer, for compost or composting, or for other productive agricultural or horticultural purposes.

STRUCTURE(S):

- A. That which is built or constructed,
- B. An edifice or building of any kind, including mobile or manufactured homes and mobile outbuildings, and/or
- C. Any work that is built up as an addition to or fixture on a premises.

UNFIT FOR HUMAN HABITATION: A building or structure the health officer or city designee finds in disrepair or suffers from lack of maintenance, is unsanitary, is pest infested, contains filth and contamination, and/or lacks ventilation, illumination, sanitary, or heating facilities, such that habitation would be injurious to the health, safety, or welfare of the occupant(s).

UNOCCUPIED: Not legally occupied.

UNSECURED: Unlocked or otherwise open to entry.

VENTILATION: The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WASTE TIRE(S): A tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

WILD OR FURBEARING ANIMAL(S): All wild animals, and other animals raised for the fur, such as chinchillas, mink, snakes, wolves, and other similar animals, exotics, and hybrids.

YARD DEBRIS: All vegetative waste generated from property maintenance and/or landscaping activities, including, without limitation, grass clippings, leaves, hedge trimmings and small tree branches, but excluding tree stumps and other similar bulky woody materials.

Where terms are not defined in this chapter and are defined in the state building, plumbing, and/or mechanical codes, such terms will have the meanings assigned to them as in those codes. Terms not otherwise defined in this chapter or in the state building, plumbing, and/or mechanical codes will have ordinarily accepted meanings. Whenever the words "dwelling unit," "dwelling," "premises," "building," or "structure" are used in this chapter, they will be construed as though they were followed by the words "or any part thereof."

(Ord. No. 15-165-03, 6-9-2015)

8-2-3: - MAINTENANCE AND REPAIRS:

- A. Required Maintenance: All systems, devices, and safeguards required by this chapter or by a previous statute or code applicable to the building, structure, or premises at the time the building, structure, or premises were erected or altered will be maintained in good working order, thus ensuring the health and safety of all inhabitants.
- B. Skilled Work Required: All repairs, maintenance work, alterations, or installations which are caused directly or indirectly by the enforcement of this chapter will be executed and installed in a skilled manner.

(Ord. No. 15-165-03, 6-9-2015)

8-2-4: - JUNK:

- A. Outside Storage Prohibited:
 - 1. Unless otherwise specifically allowed by law, it will be unlawful to store items of personal property out of doors or outside of a building or structure that is not wholly enclosed.
 - 2. Notwithstanding subsection A1 of this section, the following items of personal property may be stored outside of a building or structure:
 - a. Firewood that is stacked and usable. "Usable" means firewood that has more wood than rot and is cut to lengths that will fit a lawful fireplace or wood stove on the premises;
 - b. Construction material, if the construction material is stored in a manner to protect its utility and to prevent its deterioration and the construction material is reasonably expected to be used for construction on the premises;

- c. Open storage of materials directly associated with the primary activity of a business, provided the business is a permitted, special, or conditional use within any commercial or industrial zone, and the materials are safely stacked, bundled, or otherwise source separated, and will remain in the stream of commerce with an articulable future use; and/or
- d. All other items of personal property which are of a type, condition, or quantity consistent with normal and intended use. By way of illustration, but not limitation, as used in this subsection A2d, items of personal property include barbecue grills, lawn furniture, and solid waste disposal containers.

B. Keeping Junk Prohibited:

- 1. No person will deposit or keep junk within a public right of way or out of doors on any premises within the city, or in a structure that is not wholly enclosed.
- 2. Notwithstanding subsection B1 of this section, the following junk may be deposited or kept out of doors on premises within the city:
 - a. Any wrecked, neglected, or derelict motor vehicle, or parts thereof, kept in a motor vehicle wrecking business licensed by city;
 - b. Any derelict or neglected motor vehicle displayed by a business offering new and used motor vehicles for sale in a commercial or industrial zone;
 - c. Any wrecked motor vehicle stored outside an approved enclosure at a business offering motor vehicle repair as defined in the "Standard Industrial Classification Manual" as industry group no. 753, provided that no more than eight vehicles in an industrial zone or four vehicles in a commercial zone will be kept outside of an approved enclosure at any one time;
 - d. Any neglected or derelict vehicle stored at a business offering motor vehicle repair as defined in the "Standard Industrial Classification Manual" as industry group no. 753;
 - e. Recyclable solid waste that has been source separated and collected in conformance with this chapter;
 - f.

Recyclable materials or source separated solid waste kept at a scrap and waste material establishment, as defined by the "Standard Industrial Classification Manual" as industrial group no. 5093, operating in compliance with all applicable laws and where the materials or solid waste are enclosed by a sight obscuring fence or otherwise stored in a manner conforming with applicable zoning ordinances or in a container; and/or

g. Any waste tire kept for storage, collection, transportation, or disposal by a person licensed for that purpose by the state of Oregon.

C. Abatement of Junk Motor Vehicles: The abatement of junk motor vehicles from private or public property is subject to the abatement provisions of this chapter.

(Ord. No. 15-165-03, 6-9-2015)

8-2-5: - GENERAL EXTERIOR BUILDING AND STRUCTURE MAINTENANCE:

- A. General: The exterior of a building or structure will be maintained in good repair so as not to be in a state of deterioration, and in a sanitary condition so as not to pose a threat to the public health, safety, or welfare.
- B. Exterior Surfaces: All wood and metal surfaces, including, without limitation, window frames, doors, door frames, cornices, porches, siding, and trim on buildings and structures will be maintained in good condition so as not to be in a state of deterioration.
- C. Street Numbers: Each building or structure to which a street number has been assigned will have such number displayed in a position adjacent to or directly above any door entrance on the side of the building or structure closest to and easily observed and readable from the public right of way of the street, which is the building or structure's address of record. All numbers will be in arabic numerals at least three inches high and one-half-inch stroke.
- D. Foundation Walls: All foundation walls will be maintained free from large open cracks and breaks and will be kept in such condition so as to prevent the entry of pests.
- E. Exterior Walls and Windows:
 - 1.

All exterior walls of buildings or structures will be free from holes, breaks, or loose or rotting materials and will be maintained in good condition so as not to be in a state of deterioration. The use of tarps or similar material for emergency repair, or in place of a customary building component such as siding or a door, will not exceed three months in any two-year period.

2. Every window, door, and frame will be kept in sound condition, good repair, and weathertight. Where windows and doors have been sealed by plastic or other materials for weatherproofing, said materials will be maintained in a skilled manner. Window and door screens, while not required by this chapter, will be maintained in a skilled manner.

- F. Roofs and Drainage: The roof and flashing will be sound, tight, and not have defects that admit rain into the building or structure. Roof drainage will be adequate to prevent dampness or deterioration in the walls or interior portion of the building or structure. Roof drains, gutters, and downspouts will be free from obstructions and maintained in good repair so as not to be in a state of deterioration. Any nonresidential building or structure having originally been designed for and fitted with gutters and downspouts will continuously be maintained with such devices, in proper working condition and maintained so as not to be in a state of deterioration. The use of tarps or similar material for emergency repair will not exceed three months in any two-year period.
- G. Decorative Features: All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features on a building or structure will be maintained in good repair with proper anchorage and in a safe condition so as not to be in a state of deterioration. When any nonresidential building or structure is found to be missing a decorative feature, the health officer or city designee may require the missing decorative feature to be replaced with a similar material of similar size, shape, color, and texture.
- H. Accessory Structures: All accessory sheds, fences, walls, and other similar structures will be erected in a skilled manner and maintained in a structurally sound condition and in good repair so as not to be in a state of deterioration. Accessory structures covered by the building code will fall under the jurisdiction of the building official.

(Ord. No. 15-165-03, 6-9-2015)

8-2-6: - DERELICT STRUCTURES:

- A. Derelict Structures Prohibited: Derelict structures on any premises are hereby declared to be a public nuisance.
- B. Order to Vacate Buildings or Structures:
 - 1. If the health officer or city designee finds a building or structure in violation of subsection A of this section, the health officer or city designee may order that a placard be posted on the building or structure, ordering the building or structure vacated, and to order the owner to register the building or structure as provided in subsections F through H of this section. A person may appeal such orders of the health officer or city designee as provided in subsections 8-2-8J through M of this chapter.
 - 2. The placard will contain the information required in subsection 8-2-8C2 of this chapter.
- C. Prohibited Habitation: No person will inhabit a derelict structure, and no owner will allow any person to inhabit a derelict structure, or a building or structure ordered vacated by the health officer or city designee.
- D. Removal of Placard Prohibited:
 - 1. The health officer or city designee will remove a placard whenever the conditions that resulted in the order to vacate the building or structure have been eliminated.
 - 2. No person will deface or remove a placard without the approval of the health officer or city designee.
- E. Temporary Safeguards: Notwithstanding any other provisions of this chapter, whenever, as determined by the health officer or city designee, a building or structure poses an imminent hazard or incipient hazard, the health officer or city designee may order necessary work to be performed, including, without limitation, the boarding of openings, to render such building or structure temporarily safe and secure, whether or not proceedings to abate the hazard have been instituted. In addition to the temporary safeguards described in the immediately preceding sentence, the owner will cause such other actions to be taken that the health officer or city designee deems necessary to render the building or structure temporarily safe and secure.
- F. Derelict Structure Registration: If the health officer or city designee determines that a building or structure is a derelict structure, the owner will be required to register the building or structure within ten days after the health officer or city designee's issuance of an order to register. Registration will be made on forms provided by the health

officer or city designee and will include information relating to the location and ownership of the building or structure, the expected period of its vacancy, a plan for regular maintenance during the period of vacancy, and a plan for its reoccupancy and use, or its remediation or demolition. Any change in the information required to be provided pursuant to this subsection F will be given to the health officer or city designee not more than 30 days after the date of such change. When all conditions making the building or structure a derelict structure have been corrected, the owner will contact the health officer or city designee and request an inspection to determine compliance.

G. Derelict Structure Fees:

1. Every owner who, after receipt of the order under subsection F of this section, fails to register the building or structure within the required time set forth in the order, or registers the building or structure but allows the building or structure to remain in a derelict condition, will pay a monthly derelict structure fee, as established by resolution of the city council. Payment of the fee is due on the fifteenth day of each month. Any payment of the fee that is more than 30 days past due will be considered delinquent and subject to a penalty of \$100.00 for every delinquent monthly payment.
2. If the fees due under this subsection G are delinquent for more than 90 days, or in the event the owner fails to register the building or structure as required by subsection F of this section, the city attorney, on request of the health officer or city designee, may file an action in the circuit court of the appropriate county for the recovery of any and all delinquent fees and penalties due under this subsection G, which will be the total yearly fees plus all delinquent penalties.
3. All fees imposed under this subsection G are to be paid prior to the issuance of any permit required for the demolition, alteration, or repair of the derelict building or structure.

H. Refund of Derelict Structure Fees:

1. The health officer or city designee will refund the derelict structure fees imposed under subsection G1 of this section if the following conditions are met:
 - a.

A timetable for the remediation of the conditions or demolition of the building or structure has been submitted by the owner and approved by the health officer or city designee;

- b. All required permits have been obtained for the repair or demolition of the building or structure;
 - c. The remediation of the conditions or demolition of the building or structure is completed within the time set forth in the permits or any approved extension thereof; and
 - d. The owner has provided written authorization for city to enforce all applicable trespass and illegal camping ordinances, if any, and laws.
- 2. The refund made pursuant to subsection H1 of this section will be the derelict structure fees imposed during the previous 12-month period.
- 3. Notwithstanding subsection G3 of this section, the health officer or city designee may, upon a showing by the owner of undue economic hardship, defer payment of the fees imposed under subsection G of this section on an owner occupied residential building or structure deemed derelict under this chapter, and issue a permit for the demolition, alteration, or repair of the building or structure. If the owner complies with subsection H1 of this section, the fees imposed by subsection G of this section will be abated.

I. Abatement of Derelict Structure by Remediation:

- 1. In addition to, and not in lieu of, the abatement remedies provided for in section 8-2-8 of this chapter and receivership authority in subsection 8-2-10C of this chapter, the health officer or city designee may file a notice with the city recorder to set a public hearing before the hearings officer to seek an order for remediation of the conditions creating a derelict structure.
- 2. Upon receipt of such notice, the city recorder will set the matter for prompt public hearing before the hearings officer and will, not less than 15 days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the owner at the owner's address as reflected on the most recent tax rolls of the county assessor and on the occupant(s), if any. Notice will also be posted on or near the derelict structure. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or

occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice invalid.

3. At the hearing, the health officer or city designee will present whatever information, evidence, or testimony the hearings officer may deem relevant in support of the health officer or city designee's determination, and the owner(s) and occupant(s) will be afforded a like opportunity to rebut the determination. Any information, opinion, testimony, or evidence may be received which the hearings officer deems material, relevant, and probative of the matters in issue. The owner(s) and occupant(s) may represent themselves or be represented by legal counsel provided that such legal counsel is admitted to the practice of law in the state of Oregon.
4. The hearings officer will order the conditions creating the derelict structure be remediated if the health officer or city designee demonstrates, by a preponderance of the evidence, that the building or structure is a derelict structure.
5. In determining whether the conditions are such that remediation is required, the hearings officer will determine whether the building or structure is in a condition unfit for human habitation, or in a condition that is an incipient hazard, based on the number and extent of the following factors: a) dilapidation; b) disrepair; c) structural defects noted by the building official; d) defects increasing the hazards of fire, accident, and/or other calamity such as parts standing or attached in such manner as to be likely to fall and cause damage or injury; e) uncleanness or infestations of pests; f) condition of sanitary facilities; g) the presence of a public nuisance; and h) the history of unlawful activity in or around the building or structure.

J. Failure to Follow Order for Remediation of Derelict Structure:

1. If remediation is not commenced within 30 days after an order for remediation is entered, the health officer or city designee may file a notice with the city recorder to set a public hearing before the hearings officer to authorize the health officer or city designee to have the remediation performed and the cost thereof assessed as a lien against the property upon which the derelict structure is located.

2. Upon filing of such a request, the city recorder will set the request for prompt public hearing before the hearings officer and will, not less than 15 days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the owner at the owner's address as reflected on the most recent tax rolls of the county assessor, and on the occupant(s), if any. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice invalid.
3. At the hearing, the owner(s) and occupant(s) will be afforded an opportunity to show cause why the remediation should not be performed and the cost thereof assessed as a lien against the property. No issue heard and decided pursuant to subsection I of this section will be reintroduced or considered at the hearing provided pursuant to this subsection J unless the hearings officer, for good cause shown, determines that the interest of justice and fundamental fairness would best be served thereby.
4. The cost of remediation and a 20 percent charge for administrative overhead will be assessed in the manner provided in subsection 8-2-8H of this chapter.

(Ord. No. 15-165-03, 6-9-2015)

8-2-7: - MISCELLANEOUS VIOLATIONS:

- A. Pest Infestation Prohibited: All premises will be kept free from pest infestation. Pest infestations will be promptly exterminated in a manner that will not be injurious to human health. After extermination, proper precautions will be taken to prevent reinfestation.
- B. Noxious Vegetation; Dry Vegetation Prohibited; Trees:
 1. No owner will cause or permit noxious or rank vegetation or dry vegetation upon premises or in the right of way of a street abutting any premises. In addition to, or in lieu of, any other enforcement action

authorized by law, the health officer or city designee may cause a violation of this subsection B to be corrected in the same manner as a public nuisance pursuant to subsections 8-2-8C through N of this chapter.

2. No owner of any premises that abuts upon any street or sidewalk will permit trees or bushes on his or her premises to interfere with street or sidewalk traffic. An owner of premises that abuts upon a street or sidewalk must keep all trees and bushes on his or her premises and on the adjoining parking strip trimmed to a height of not less than eight feet above the sidewalks and not less than ten feet above the streets.
3. No owner will allow to stand any dead or decaying tree that is a hazard to the public, persons, or property on or near the owner's premises.

(Ord. No. 15-165-03, 6-9-2015)

8-2-8: - PUBLIC NUISANCES:

- A. Public Nuisance Prohibited: A public nuisance is any thing, condition, or act which is or may become a detriment or menace to the public health, safety, or welfare. No person will cause, permit, or maintain a public nuisance on public or private property.
- B. Specific Public Nuisances: The following are specifically declared to be public nuisances, but this list will not be deemed to be exclusive:
 1. The accumulation, exposure, or deposit of any garbage, rubbish, bulk solid waste, or solid waste on any public way or any private street, alley, or lot, or into a stream, well, spring, brook, ditch, pond, river, or other inland waters within the city, or the placing of such substances in such position that high water or natural seepage will carry the same into such waters;
 2. Any physical condition of a premises considered an attractive nuisance, including, without limitation, abandoned wells, shafts, basements (i.e., that portion of a building or structure which is partly or completely below grade), and unguarded machinery;
 3. An abandoned, unattended, or discarded icebox, refrigerator, or other container accessible to children which has an airtight door or lock which may not be released for opening from the inside;
 4. Dangerous pilings and unprotected excavations;
 - 5.

Any premises that has unsanitary plumbing fixtures, or plumbing fixtures that permit the spillage of effluent outside of an approved sanitary sewer system, or the escape of sewer odors and gases;

6. The maintenance of premises which are in such a state or condition as to cause an offensive odor;
7. The accumulation of feces or manure (whether in piles, heaps, or otherwise) unless enclosed in containers capable of excluding flies and maintained in such a manner or condition that offensive odor is not emitted therefrom;
8. The burning of any garbage, rubbish, rubber, cloth, or any other thing, the burning of which, or the smoke emitted from such burning, creates an offensive odor;
9. The accumulation of stagnant water in which mosquitoes may breed;
10. Violation of subsection 8-2-4B of this chapter by keeping more than five cubic yards of junk on any residentially zoned property or by keeping four or more neglected or wrecked motor vehicles on any residentially zoned property;
11. Violation of subsection 8-2-6A, "Derelict Structures Prohibited," of this chapter;
12. Violation of subsection 8-2-7A, "Pest Infestation Prohibited," of this chapter;
13. Violation of subsection 8-2-7B, "Noxious Vegetation; Dry Vegetation Prohibited; Trees," of this chapter; and/or
14. Any building or structure that is in a condition that poses an imminent hazard to public health, safety, or welfare.

C. Notice of Public Nuisance and Order to Person Responsible:

1. Whenever the health officer or city designee has reasonable grounds to believe that a violation of subsection A of this section has occurred, a notice of public nuisance and order will be served to the owner(s) and occupant(s), if any, in any manner provided by subsection D1 of this section.
- 2.

A notice of public nuisance and order will be in writing and include the following: a) a description of the premises sufficient for identification; b) a short and plain statement of the reason(s) why the notice and order is being issued; c) a correction order allowing a reasonable time for the repairs and improvements required to bring the premises into compliance with the provisions of this chapter; d) a statement that city may abate the nuisance pursuant to this chapter and that the person responsible will be responsible for the costs of such abatement; e) a statement of the right to appeal the notice of public nuisance and order to the hearings officer; f) a short and plain statement of the appeal procedure; and g) a statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the notice of public nuisance and order.

3. Any notice of public nuisance and order issued in substantial compliance with subsection C2 of this section will be effective from and after the date the notice and order is issued. All notices served pursuant to this subsection C will be considered served on the date of personal service or as of the date of mailing if not personally served.

D. Method of Service:

1. The notice required by subsection C of this section will be: a) personally delivered to the owner(s) and occupant(s), if any, b) sent to the owner(s) and occupant(s), if any, by first class mail to their last known residence or business address, or c) posted at the premises and also sent by first class mail to the owner(s) and occupant(s), if any, to their last known residence or business address if they cannot be located. Any notice served by mail will be deemed received three business days after the date mailed.
2. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) will not render the notice void and in such case, the notice will be sufficient.

E. Recording a Violation: City may record a notice of violation with the county clerk. Failure to record a notice of violation will not affect the validity of the notice as to persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation will be recorded.

F.

Joint Responsibility: If more than one person is responsible for a public nuisance, they will be jointly and severally liable for correcting the violation and for any costs incurred by city in abating the nuisance.

G. City Abatement Procedures:

1. If within time allowed, the violation has not been corrected, the health officer or city designee may cause the violation to be corrected. The health officer or city designee, or a person authorized by the health officer or city designee, may enter upon the property to abate the nuisance.
2. The health officer or city designee will keep an accurate record of the expense incurred correcting the violation and will include therein an administrative overhead fee in an amount of 20 percent of the actual cost of correction.

H. Assessment of Costs:

1. After abatement by city, the city manager will send to the owner(s) and occupant(s), if any, by first class mail to their last known residence or business address, a notice stating: a) the total cost of abatement, including the administrative overhead fee, and b) that the costs and administrative overhead as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
2. If the costs and administrative overhead are not paid within 30 days after the billing date, the health officer or city designee will thereafter file with the hearings officer an itemized statement of costs and overhead, including an additional administrative fee in an amount of 20 percent of the actual cost of correction to cover the additional expenses involved in collecting the unpaid balance.
3. Upon receipt of such notice, the city recorder will set the matter for prompt public hearing before the hearings officer and will, not less than 15 days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the owner(s) at the owner's address as reflected on the most recent tax rolls of the county assessor, and on the occupant(s), if any. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) will not render the notice void and in such

case, the notice will be sufficient. Refusal to accept any notice provided under this chapter via registered or certified mail will not be deemed to, and will not, render the notice invalid.

4. After the hearing, the hearings officer will declare the correctness of such statement and declare the same to be a lien upon the property.
 5. An error in the contents or service of any notice will not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void but it will remain a valid lien against the property.
- I. Summary Abatement: The abatement procedure provided by this section is not exclusive, and city may use any other procedures for abatement authorized by law. The general procedures set forth herein may be used in conjunction with other abatement actions or procedures.
- J. Appeals Generally: A person may appeal a notice or order of the health officer or city designee, other than an order pursuant to subsection 8-2-61 of this chapter, issued pursuant to this chapter only as provided in subsections K through M of this section.
- K. Reconsideration by Health Officer or City Designee:
1. Any person affected by a notice or order of the health officer or city designee under this chapter may request reconsideration by filing a request with the health officer or city designee. The request must be received by the health officer or city designee within ten days after the effective date of the notice or order.
 2. The request for reconsideration must be in writing and include: a) the name, address, and telephone number of the person requesting reconsideration, b) a copy of the notice or order being requested for reconsideration, and c) a statement that the person wishes the health officer or city designee to reconsider the notice or order.
 3. The request for reconsideration may be granted or denied by summary order.
 4. The health officer's or city designee's response to the request for reconsideration will be personally delivered to the person requesting reconsideration, or sent to the person by first class mail at the address

listed on the request for reconsideration. If the health officer or city designee's response is served by mail it will be deemed received three business days after the date mailed.

L. Appeal to Hearings Officer:

1. Any person affected by a notice or order of the health officer or city designee may appeal the notice or order to the hearings officer by filing a notice of appeal with the city recorder, subject to the provisions of this subsection L.
2. A person must first request that the health officer or city designee reconsider the notice or order as provided in subsection K of this section.
3. The notice of appeal must be filed within ten days after the date the health officer's or city designee's response to the request for reconsideration is delivered to the person or the notice is deemed to have been received by the person under subsection K of this section. A copy of the notice of appeal must also be filed with the health officer or city designee.
4. The notice of appeal must be in writing and include: a) the name, address, and telephone number of the appellant, b) a copy of the notice or order being appealed, c) a statement that the person wishes to appeal the notice or order, and d) the basis for the appeal, stating with specificity why the notice or order was issued in error, based on one or more of the following: 1) city failed to follow the procedures prescribed in this section and that failure has prejudiced the person in respect to some substantial right; 2) no violation exists on the premises that are the subject of the notice or order; and/or 3) the time for or method of compliance required in the notice or order is impossible to comply with or, because of circumstances peculiar to the person or property, would work an unreasonable hardship.
5. The hearings officer's hearing upon the appeal will be limited to the reasons the notice or order is incorrect, as set forth in the notice of appeal. A notice of appeal that is filed after the period provided for filing an appeal will be dismissed by the hearings officer as untimely. Failure to appeal as provided in this subsection L will be a waiver of all right to review of the notice of order.
- 6.

The person requesting the appeal will be afforded the opportunity to provide evidence or a statement in opposition to the notice or order, and the person requesting review will be afforded the opportunity to cross examine any witness presenting testimony.

7. The health officer or city designee will be afforded the opportunity to present any evidence, argument, or statement in support of the notice or order, and city will be afforded the opportunity to cross examine any witness presenting such testimony.
8. The hearings officer will adopt findings and conclusions supporting a decision which either: a) affirms the notice or order as given, b) modifies the notice or order, or c) rescinds the notice or order.
9. The filing of a notice of appeal will stay all proceedings for abatement until the final disposition of the appeal.
10. Upon a final disposition ordering abatement of a nuisance, and unless another period for compliance is provided in the decision, the person responsible for abatement will have a period equal to that specified in the original notice, commencing from the date of the final disposition, in which to abate the nuisance prior to action by city.
11. The hearings officer will provide a written determination within 20 days of receipt of the appeal.

M. Appeal of Hearings Officer's Decision or Order:

1. Appeal of a final decision or order of the hearings officer must be made to the city council within 30 days after notice of the final decision or order. The appeal must be submitted to the city recorder and contain: a) the name and address of the appellant, b) the nature of the determination being appealed, c) the reason the determination is incorrect, and d) the determination the appellant believes is correct. An appellant who fails to file a statement within the aforementioned 30 day appeal period waives all rights to object to the determination.
2. The city council will hear and determine the appeal on the basis of the written statement and any additional evidence the city council considers appropriate or relevant, including any information provided by the health

officer or city designee. The city recorder will provide the appellant with written notice of the hearing on the appeal not less than ten days prior to the hearing.

3. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the city council is final and conclusive. The decision of the city council will be recorded in the city council's minutes.

N. Collections: Collection of abatement costs, fees, and penalties are in addition to any other remedies, civil or criminal, available to city under applicable law.

(Ord. No. 15-165-03, 6-9-2015)

8-2-9: - INTERPRETATION; SEVERABILITY; ERRORS:

All pronouns contained in this chapter and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this chapter are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this chapter is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will: a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this chapter. This chapter may be corrected by order of the city council to cure editorial and/or clerical errors.

(Ord. No. 15-165-03, 6-9-2015)

8-2-10: - PENALTIES:

A. Violations:

1. Violation of this chapter is an infraction and is punishable by a fine of not less than \$100.00 and not more than \$500.00. The second and subsequent violation of the same provision of this chapter in any one year period is

punishable by a fine of not less than \$250.00. In addition to any other rights or remedies provided under this chapter, city may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, city's reasonable attorney fees and other fees, costs, and expenses incurred by city to enforce this chapter.

2. Each violation of a provision of this chapter will constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue will constitute a separate offense. The rights and remedies imposed by this chapter are in addition to, and not in lieu of, any other rights and remedies available to city. If any provision of this chapter is violated by a firm, corporation, limited liability company, or any other legal entity, the officers, members, managers, shareholders, and/or directors (as the case may be) will be personally subject to the penalties imposed by this section.
3. In addition to any other penalty provided by law, a person adjudged responsible for violation of any of the provisions of this chapter may be ordered by the hearings officer or court to correct the violation.

B. Enforcement Fees:

1. In addition to, and not in lieu of, any cost, fee, fine, or penalty provided for in this section, the health officer or city designee may order a penalty in the form of a monthly enforcement fee, as established by resolution of the city council, for each property found in violation of this chapter that meets the following criteria: a) the property has been the subject of a notice and order, a response period of 30 days has passed since the effective date of the notice and order, and the property remains out of compliance with the notice and order or any subsequent notices; or b) the property has not been brought into compliance with this chapter within 30 days after being notified by the health officer or city designee of a violation of this chapter.
2. A person may appeal the health officer or city designee's order to impose a monthly enforcement fee in the manner provided for in subsections 8-2-8j through N of this chapter.

C. Receivership Authority: In addition to, and not in lieu of, any other provision in this chapter, when the health officer or city designee finds residential property in violation of this chapter and believes that the violation is a threat to the public health, safety, or

welfare, and the owner has not acted in a timely manner to correct the violations, the health officer or city designee may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon housing receivership act. ^[2]

(Ord. No. 15-165-03, 6-9-2015)

CHAPTER 3 - SOLID WASTE MANAGEMENT

8-3-1: - INTRODUCTION:

- A. Short Title: This chapter will be known as the SOLID WASTE MANAGEMENT ORDINANCE and will be cited herein as "this chapter."
- B. Definitions: For purposes of this chapter, the following terms have the following meanings:

BIN: A receptacle provided by franchisee, to be used by their customers for the containment and disposal of recyclable material.

CAN: A receptacle owned by a customer, to be used for the containment and disposal of solid waste. The customer's use of a can requires manual collection service.

CART: A receptacle provided by franchisee, to be used by its customers for the containment and disposal of solid waste or recyclable material. The customer's use of a cart requires mechanical collection service.

CITY: The city of John Day, Oregon, and the area within its incorporated boundaries, as extended in the future.

COMPACT AND COMPACTION: The process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.

COMPENSATION:

- 1. Any type of consideration paid for service including, without limitation, rent and the proceeds from resource recovery and any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants, or similar persons as part of rent,
- 2. The exchange of service between persons, and

3. The flow of consideration from the person owning or possessing the solid waste to the person providing service, or from the person providing service to the person owning or possessing the same.

CONSTRUCTION AND DEMOLITION WASTE: Solid waste resulting from the construction, repair, or demolition of buildings, roads, and other structures.

CONTAINER: A receptacle provided by franchisee that is often referred to as a "dumpster," that is one to ten yards in size, and that is used primarily by commercial customers for the containment and disposal of solid waste or recyclable material.

DAMAGES: Claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind and nature whatsoever, including, without limitation, attorney fees.

DISPOSE OR DISPOSAL: The accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of solid waste.

DROP BOX: A single container designed for storage and collection of large volumes of solid waste or recyclable materials, which is usually ten cubic yards or larger in size, and provides for transportation of large volumes of solid waste or recyclable material to a disposal site for transfer, landfilling, recycling, materials recovery or utilization, and then emptied and returned to either its original location or some other location.

ENVIRONMENTAL LAWS: Any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, and/or the environment.

FRANCHISE: The authorization to operate a solid waste management and recycling service, including all mutual rights, duties, and obligations of franchisee and city contained in this chapter.

FRANCHISEE: Clark's Disposal, Inc., an Oregon corporation, who has been granted a franchise under this chapter.

FRANCHISEE'S REPRESENTATIVES: Franchisee's affiliates, officers, board members, shareholders, employees, agents, representatives, and/or contractors.

GENERATOR: The person who produces solid waste or recyclable material to be placed, or that is placed, for collection; provided, however, "generator" does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste or recyclable material after it has been produced by the generator and placed for collection and disposal.

HAZARDOUS WASTE: Any hazardous waste as defined in ORS 466.005, or any amendments or subsequent revisions thereof.

INFECTIOUS WASTE: Any infectious waste as defined in ORS 459.386, as amended.

LAWS: Any and all applicable federal, state, and local restrictions, declarations, statutes, orders, laws, rules, regulations, codes, and ordinances, including, without limitation, any city ordinances and regulations, the environmental laws, and any laws concerning or affecting the provision of solid waste management services, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

PLACED FOR COLLECTION: To put solid waste, recyclable material, or yard debris out for collection by franchisee, as provided in this chapter.

PUTRESCIBLE MATERIAL: Organic materials that can decompose, which may create foul smelling, offensive odors or products.

RECEPTACLE: A can, cart, bin, container, drop box, or other vessel used for the disposal of solid waste and recycling that has been approved by city, and into which solid waste, recyclable material, or yard debris may be placed for collection.

RECYCLABLE MATERIAL: Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

RECYCLING: Any process, including mixed recycling, by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this chapter, "recycling" includes the collection, transportation, and storage of solid waste done in order to place the solid waste in the stream of commerce for recycling or resource recovery.

RESOURCE RECOVERY OR RESOURCE RECOVER: The process of obtaining useful material or energy resources from solid waste, including reuse, recycling, and other material recovery or energy recovery of or from solid waste.

REUSE: The return of waste into the economic stream, to the same or similar use or application without change in the waste's identity.

RIGHTS OF WAY: Mean, without limitation, streets, roads, highways, bridges, alleys, sidewalks, and other public ways or areas.

SERVICE: The collection, storage, transportation, transfer, reuse, recycling, and/or other resource recovery from, or disposal of, solid waste. The term "service" includes the provision of special services.

SOLID WASTE: All useless or discarded putrescible and non-putrescible materials, including, without limitation, garbage, rubbish, refuse, ashes, and/or swill; newsprint or wastepaper; corrugated paper or cardboard; residential, commercial, industrial, construction, demolition, governmental, and/or institutional wastes; discarded or abandoned vehicles or parts; discarded home or industrial appliances; equipment or furniture; manure, vegetable or animal solid and semisolid wastes; dead animals; and infectious waste. "Solid waste" does not include: 1) hazardous waste, 2) sewage sludge and septic tank and cesspool pumpings or chemical toilet wastes, and/or 3) reusable "beverage containers" as defined under ORS 459A.700.

SOLID WASTE MANAGEMENT: The business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling, special service, and resource recovery of solid waste.

SPECIAL SERVICE: Collection of bulky waste, including furniture, appliances, and large quantities of waste.

TRANSFER STATION: Franchisee's transfer station located at 26431 Luce Creek, John Day, OR 97845.

WASTE: Any material that is no longer wanted by or is no longer usable by the generator, producer, or source of the material, which material is to be disposed of or to be resource recovered by another person. Even though materials which would otherwise come within the definition of "waste" may from time to time have value and, thus, be resource recovered, such does not remove them from this definition. Source separated materials are "wastes" within this definition.

- C. Purpose and Policy: City desires to regulate solid waste management to: 1) ensure safe, economical, and comprehensive solid waste service, 2) ensure rates that are just, fair, reasonable, and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices, and 3) provide for technologically and economically feasible resource recovery.

(Ord. No. 11-149-02, 5-24-2011)

8-3-2: - GRANT OF FRANCHISE:

- A. Franchise: Subject to the terms and conditions contained in this chapter, city grants franchisee the right, privilege, and nonexclusive franchise to provide solid waste management for solid waste and recyclable materials generated within city. Notwithstanding anything contained in this chapter to the contrary, city reserves the right to determine the scope of this franchise and the services granted and/or authorized hereunder, and city may require franchisee to renegotiate the terms of this franchise at any time by providing franchisee 30 days' prior written notice. Franchisee will perform its obligations under this franchise in compliance with the laws. The rights and privileges granted by city to franchisee under this chapter extend only to the extent of city's right or authority to grant the franchise to franchisee.
- B. Franchise Nonexclusive: The franchise granted by city under this chapter is and will be construed as a nonexclusive franchise. City reserves the right to grant franchises, licenses, permits, and/or other similar rights for similar or different purposes allowed under this chapter. Except as otherwise provided under this chapter and/or otherwise permitted by city in writing, no person will: 1) provide any services for compensation or offer to provide or advertise for the performance of the services, and/or 2) perform services for compensation to any tenant, lessee, or occupant of real property of the person.
- C. Enforcement: City will have the right to observe and inspect all aspects of franchisee's collection operations, facilities, services, and records to ensure franchisee's strict performance and compliance with this chapter. If, at any time, franchisee fails to timely perform any franchisee obligation under this chapter, city may elect to perform the obligation at the expense of franchisee. Nothing in this chapter will prevent a person from hauling putrescible and/or nonputrescible waste created by the person doing the hauling.
- D.

Specific Exceptions: Notwithstanding anything contained in this chapter to the contrary, nothing contained in this chapter will operate to prohibit any of the following:

1. Any person from transporting solid waste the person produces to an authorized disposal site or resource recovery facility. Solid waste produced by a tenant, licensee, occupant, or similar person is produced by such person and not the landlord, property owner, or agent of either.
2. Any person from contracting with a state or federal agency to provide service to such agency; provided, however, such person will apply for a franchise for that service only and will comply with all applicable requirements imposed on franchisee under this chapter with the exception of rates or terms of service set by written contract with such agency where they are in conflict.
3. Any person from collecting, transporting, and conveying solid waste or waste over and upon the rights of way for the purpose of resource recovery, provided such person has obtained a license under section 8-3-9 of this chapter.
4. Any person from engaging in a charitable, civic, or benevolent activity; provided, however, merely operating as a nonprofit entity does not qualify under this exception. The John Day city council (the "city council") will determine the application or nonapplication of this exception and such determination will be final and binding upon all persons.

(Ord. No. 11-149-02, 5-24-2011)

8-3-3: - SOLID WASTE MANAGEMENT SERVICES:

- A. Waste Ownership: Except as otherwise provided in this chapter 1) solid waste that is properly placed out for collection is the property of franchisee, 2) franchisee will not store, collect, transport, dispose of, or resource recover infectious waste, and/or 3) franchisee will not store, collect, transport, dispose of, or resource recover hazardous waste.
- B. General Collection Standards: Collection of solid waste will be performed in compliance with the laws. In addition, in connection with franchisee's performance of its obligations under this chapter, franchisee will pay and/or perform the following:
 - 1.

Provide solid waste collection service to any person living within or conducting business within city. Perform curbside collection of solid waste at least once per week in city (or as often as required by ORS chapters 459 and 459A if more often). All collections will be made safely, efficiently, and quietly. Collect putrescible material at least once per week.

2. Provide collection of residential solid waste carts and cans on a weekly schedule that is the same day each week; offer monthly collection service.
3. Provide will-call service for container service for residential and commercial customers within 48 hours of the initial request for service.
4. Use due care to prevent solid waste from being spilled and/or scattered during collection. If any solid waste is spilled and/or scattered during collection, franchisee will promptly clean up all spilled and/or scattered solid waste. All receptacle lids will be replaced after contents are emptied, and the receptacle will be returned to its original position so as to not jeopardize the safety of motorists, pedestrians, and/or bicyclists.
5. Use reasonable care in handling all collection receptacles and enclosures. Damage caused by the negligence of franchisee and/or franchisee's representatives to private property, including, without limitation, landscaping, is the responsibility of franchisee and will be promptly restored to its original condition or otherwise corrected to the owner's satisfaction.
6. Ensure that all solid waste collection operations are conducted as quietly as possible and in accordance with the laws, including, without limitation, any federal, state, county, and city noise emission standards. Unnecessarily noisy trucks or equipment are prohibited.
7. Provide notice to any customer whose receptacle is not collected because it is overweight. The notice will: a) identify franchisee's name and telephone number, b) provide a description of the problem, and c) state that franchisee will provide double the customer's subscribed service level at no additional charge on the customer's next scheduled collection day, if a special pick up has not been requested. If a special pick up has been requested, franchisee may charge the normal will-call rate.
- 8.

Notify all affected customers of changes to the collection schedule within seven calendar days of any change. Franchisee will not permit any customer to go more than eight calendar days without service in connection with a collection schedule change.

9. Have the option to refuse collection service to a customer upon nonpayment of a billing (or portion of a billing) after an account becomes 45 days past due, or upon refusal to pay any reasonably required advance payments, delinquent charges, and/or charges associated with starting a new service. Franchisee may not withhold collection services unless at least ten days' prior written notice is given to the customer.
10. Franchisee will dispose of all solid waste collected under this chapter at the transfer station; ultimate disposal will be made by franchisee at the Finely Butte Landfill.
11. Franchisee will provide those recycling services city may request in writing from time to time.

C. Equipment and Facility Standards: Franchisee will perform and comply with the following equipment and facility standards:

1. All equipment will be kept properly maintained and in good order, repair, and condition. Franchisee will provide and maintain equipment that meets and conforms with the laws.
2. Vehicles and containers used to transport solid waste will be kept reasonably clean so as not to contaminate the environment and/or city's water system. Trucks will be equipped with metal bodies that are leak proof to the greatest extent practicable, and will be of the compactor type, with front, rear, or automatic loading capabilities. Pickup trucks, open bed trucks, and/or specially designed, motorized local collection vehicles used for transporting solid waste will have a metal body that is leak proof to the greatest extent practicable, and an adequate cover over the container portion to prevent scattering of the load.
3. All fuel oil or vehicle leaks or spills which result from franchisee's vehicles will be cleaned up immediately.
- 4.

All vehicles used by franchisee in providing solid waste management services will be registered with the Oregon department of motor vehicles and will meet or exceed all legal operating standards. In addition, on each vehicle, the name of franchisee, franchisee's local telephone number, and the vehicle's identification number will be prominently displayed.

5. No collection vehicle will exceed the safe loading requirements or maximum load limits as determined by the Oregon department of transportation. Franchisee will endeavor to operate equipment that minimizes damage to city streets.
6. All surface areas around franchisee's site facilities, including, without limitation, vehicle and equipment storage areas, service shops, wash stations, transfer sites, collection centers, and administrative offices, will be kept clean to eliminate site runoff into city's water system.

- D. Safety Standards: Franchisee will provide appropriate operational and safety training for all franchisee employees who maintain, use, and/or operate vehicles, equipment, and/or facilities for collection of waste and/or who are otherwise directly involved in such collection. Employees involved in collection services will be trained to identify, and not to collect, hazardous waste and/or infectious waste. Employees who handle hazardous waste and/or infectious waste will be properly trained.
- E. Right of Way Standards: Franchisee will ensure proper and safe use of the rights of way. Without otherwise limiting the generality of the immediately preceding sentence, franchisee's use of the rights of way will be conducted: 1) in a safe manner, taking into account all applicable traffic control rules and procedures, 2) so as to minimize disruption and interference of the rights of way, and 3) in accordance with this chapter and the laws.
- F. Customer Service Standards: Franchisee will pay and/or perform the following customer service related obligations:
1. Provide sufficient collection vehicles, receptacles, facilities, personnel, and finances to provide the services and perform franchisee's obligations under this chapter, as now set forth or as hereafter provided.
 2. Sufficiently staff, operate, and maintain solid waste management operations within city.
 - 3.

Ensure a responsive, customer service oriented business. Franchisee will provide customers with a local telephone number listed in a directory of general circulation.

4. Adequately staff operations and utilize an answering machine or voice mail to provide prompt response to customer service requests or inquiries, and respond promptly and effectively to any complaints regarding service. Calls for service will be returned within two days.
5. Train collection personnel prior to their beginning solid waste collection. The scope of the training will include, without limitation, all legal and industry standards for safety practices and service to the public and the importance of courteous customer service.
6. Require all employees (both those of franchisee and those of persons under contract with franchisee) to present a neat appearance and conduct themselves in a courteous and respectful manner.

- G. Customer Service Reporting Standards: Franchisee will keep customer service records of oral and written complaints or service issues registered with franchisee from customers within city. Franchisee will record the name and address of the complainant, date and time of issue, nature of issue, and nature and date of resolution. Franchisee will keep a record of all current and previous year customers within city. Customer records will be available to city within ten days of city making a written request for such records.
- H. Financial Reporting Standards: Franchisee will keep current, adequate records of account. City may inspect the records of account anytime during business hours, and may review the records from time to time. If a review of the records is required, the reasonable cost of such independent review will be franchisee's responsibility. Any costs incurred in a review due to franchisee's failure to keep adequate business records will be franchisee's responsibility.
- I. Preferential Rates: Franchisee will not provide any rate preferences to any person, locality, and/or type of solid waste stored, collected, transported, disposed of, or resource recovered. This subsection will not: 1) prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled, and location of customers provided such rates are: a) reasonable based upon the costs of the

particular service, and b) approved by the city council in the same manner as other rates, and/or 2) prevent any person from volunteering service at a reduced cost for a charitable, community, civic, or benevolent purpose.

(Ord. No. 11-149-02, 5-24-2011)

8-3-4: - FRANCHISE RATES AND CHARGES:

- A. Rate Structure: Subject to the terms and conditions contained in this chapter, commencing on the effective date hereof and ending on December 31, 2011, franchisee will charge its customers not more than those service rates in the "rate schedule." On or before September 1, 2011, and on or before the same day of each calendar year thereafter, franchisee will provide city for city's review and approval a proposed rate schedule identifying the rates franchisee intends to charge its customers during the immediately following calendar year (i.e., January 1 through December 31). Franchisee will provide city the proposed rate schedule whether or not franchisee intends to increase, decrease, or make no modifications to the rate schedule then in effect. In addition to the intended rates, franchisee's proposed rate schedule will be supported by: 1) documentation, information, and/or other evidence of actual or projected increases in operating costs within city which justify any proposed increases, and 2) any other documentation, information, and/or evidence city may reasonably request. City will not review or consider any proposed rate schedule unless and until franchisee complies with the submittal requirements contained in this subsection. Franchisee's rates must be reasonable in light of the services franchisee provides to its customers. The term "reasonable" will be determined in city's sole discretion; provided, however, when determining what is reasonable, city may consider, among other things, rates for similar services under similar conditions in other areas, as affected by local conditions in the local area, and rates that will provide franchisee a reasonable rate of return and operating margin.
- B. Consideration of Rate Schedule: Franchisee's proposed rate schedule will be reviewed and considered by the city council at a public meeting. If the city council denies the proposed rate schedule, franchisee may file additional information with the city council to further justify the proposed rate schedule. The city council will review and consider any additional information submitted by franchisee in support of the proposed rate schedule. If, despite franchisee's submittal of additional information or

otherwise, the city council decides to deny the proposed rate schedule, the rate schedule then in effect will remain in effect, subject to any adjustments requested by the city council.

- C. Establishment of Rate Schedule: Except as otherwise provided under this section, all rates and services must receive the city council's prior review and approval. Rates will be approved by resolution of the city council. An approved rate schedule will be effective for a period of one calendar year, beginning January 1 and ending December 31 of the applicable calendar year. The approved rates will be fixed rates and franchisee will not charge more than the fixed rates unless approved by the city council in accordance with this section. If a onetime service is needed by a customer that is not listed on the rate schedule, franchisee may charge a reasonable rate for such service, and will include that service on the rate schedule submitted to the city council in accordance with this section. Subject to the immediately preceding sentence, rates for a given service must be established under the provisions of this section before such service may be provided to customers.
- D. Interim or Emergency Rate Modifications: The John Day city manager (the "city manager") may, with appropriate information, documentation, and/or evidence submitted by franchisee, grant an interim or emergency rate for new, special, and/or different services for a period not to exceed six months. In addition, an application for a temporary rate adjustment may be made to the city manager when the cost of collection is significantly increased by governmental regulations or when there is a single, significant increase in the costs of collection not anticipated at the time of the last rate adjustment. Applications for any temporary rate adjustment will be reviewed by the city manager and will be approved or denied in the city manager's sole discretion.

(Ord. No. 11-149-02, 5-24-2011)

8-3-5: - FRANCHISE FEE:

- A. Compensation to City: In consideration of the rights, privileges, and franchise granted to franchisee under this chapter, franchisee will pay city a franchise fee (the "franchise fee") equal to three percent of franchisee's gross revenues derived directly or indirectly from franchisee's provision of solid waste management for solid waste and recyclable materials within city, less net uncollectables (the "gross revenues"). Franchisee will pay the franchise fee in quarterly installments, which quarterly

installments will be due on or before the last day of the month immediately following the end of the applicable calendar year quarter. The first quarterly payment of the franchise fee is due on or before July 31, 2011. Contemporaneously with each quarterly payment of the franchise fee, franchisee will file with city a sworn statement describing the total gross revenues franchisee received during the immediately preceding quarter (the "accounting statement"). City's acceptance of any payments under this subsection will not constitute a waiver by city of any franchisee breach under this chapter. City may increase or decrease the franchise fee upon 90 days' prior written notice to franchisee. If franchisee fails to timely and fully pay the franchise fee (or any other amount) due to city under this chapter, franchisee will pay a late fee equal to five percent of the unpaid amount or \$200.00, whichever is greater (a "late fee"). City may levy and collect a late fee in addition to all other remedies available to city for franchisee's failure to pay city the franchise fee (or any other amount).

- B. Inspection of Books and Records: On ten days' advance written notice to franchisee, city may review franchisee's books, records, documentation, and/or any other information city reasonably determines necessary or appropriate to audit an accounting statement and/or ascertain franchisee's compliance with this chapter. Franchisee will cooperate with city in conducting any inspection and/or audit and will correct any discrepancies affecting city's interest in a prompt and efficient manner. Franchisee will bear the cost of any audit. Franchisee will keep all its books, records, documentation, and/or information pertaining to franchisee's performance of its obligations under this chapter.

(Ord. No. 11-149-02, 5-24-2011)

8-3-6: - INSURANCE AND INDEMNIFICATION:

- A. Insurance: Franchisee, at its cost and expense, will obtain and maintain in full force and effect during the term of the franchise, the following insurance coverage and at least their respective minimum limits: 1) workers' compensation insurance as required by applicable Oregon law; 2) employer's liability insurance with limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; 3) comprehensive general liability insurance with limits of not less than \$2,000,000.00 for bodily injury or death to each person, \$2,000,000.00 for property damage resulting from any one accident, and \$2,000,000.00 for all other types of liability (e.g., products

liability and completed operations); and 4) automobile liability insurance for all owned, nonowned, and hired vehicles that are or may be used by franchisee and its employees with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident. Each liability insurance policy franchisee is required to obtain and maintain under this subsection will name city as an additional insured and will provide that no cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing city 30 days' prior written notice. All insurance franchisee is required to obtain and maintain under this subsection will be issued only by insurance companies licensed in Oregon. Prior to city's execution and acceptance of this chapter, and at any other time thereafter within 30 days after city's written request, franchisee will provide city with certificates of insurance and endorsements evidencing franchisee's compliance with this subsection. Franchisee will be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. All such deductibles, retentions, and/or self-insurance must be declared to and approved by city.

- B. Indemnification: Franchisee will defend, indemnify, and hold city, and each employee, officer, agent, contractor, and representative of city, harmless for, from, and against any and all damages resulting from or arising out of, whether directly or indirectly, the following: 1) any activities in connection with franchisee's and/or franchisee's representative's operation and/or maintenance of franchisee's facilities and/or services, except those that arise out of city's sole negligence; 2) any litigation involving franchisee and/or franchisee's representative's actions or inactions in connection to this franchise; 3) the negligence of franchisee and/or franchisee's representatives; 4) accident, injury, and/or damage whatsoever caused to any person (including, without limitation, franchisee and/or franchisee's representatives); 5) franchisee's and/or franchisee's representative's failure to obtain and/or comply with any necessary permits, licenses, and/or laws; 6) damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of franchisee's and/or franchisee's representative's exercise of this franchise and/or failure to exercise this franchise, whether or not the acts or omissions complained of is authorized, allowed, and/or prohibited by this franchise; 7) the acts or omissions of franchisee and/or franchisee's representatives in connection with franchisee's and/or franchisee's representative's use of the rights of way and/or in providing or offering solid waste management

services, whether such acts or omissions are authorized, allowed, and/or prohibited by this chapter; and/or 8) franchisee's breach and/or failure to perform any franchisee representation, warranty, covenant, and/or obligation under this chapter.

- C. Survival of Indemnification Obligations: Franchisee's indemnification obligations provided in subsection B of this section will survive the termination of the franchise. Franchisee's costs incurred in satisfying its indemnification obligations will not decrease the franchise fees and will not increase the total amounts paid by the rate payers for which franchisee serves under the authority of this franchise. All such expenses will be the sole responsibility and burden of franchisee.

(Ord. No. 11-149-02, 5-24-2011)

8-3-7: - TERM AND TERMINATION:

- A. Term of Franchise: Unless sooner terminated or extended as provided in this chapter, the franchise granted to franchisee under this chapter will be in full force and effect for a period of ten years, commencing from the effective date hereof.
- B. Termination by Mutual Agreement and Prior Written Notice: The franchise may be terminated at any time by the mutual written agreement of city and franchisee. City may terminate the franchise at any time for any reason by providing franchisee 90 days' prior written notice.
- C. Termination for Cause: Notwithstanding anything contained in this chapter to the contrary, city may terminate the franchise immediately by notice to franchisee upon the occurrence of any of the following events: 1) franchisee fails to comply with any laws; and/or 2) franchisee breaches and/or otherwise fails to perform any franchisee representation, warranty, covenant, and/or obligation contained in this chapter.
- D. Remedies: If franchisee breaches or otherwise fails to perform any franchisee representation, warranty, covenant, and/or obligation under this chapter, city may, in addition to any other remedy provided to city under this chapter, pursue any and all remedies available to city at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- E. Continuity of Service: Upon the termination of the franchise, city may require franchisee to continue to provide solid waste collection services for a reasonable period of time, not to exceed six months. Upon the termination of this franchise, city

may take such actions city deems necessary or appropriate to ensure continued service to franchisee's customers. Franchisee will pay any and all costs associated with such actions.

(Ord. No. 11-149-02, 5-24-2011)

8-3-8: - DISPUTE RESOLUTION PROCESS AND PUBLIC RESPONSIBILITY:

- A. Customer Dispute: Any franchisee customer who is aggrieved or adversely affected by any franchisee policy or practice will first attempt to settle the dispute by notifying franchisee of the nature of the dispute and affording franchisee the opportunity to resolve the dispute. If the customer is unable to resolve the dispute with franchisee, the customer may contact the city manager to discuss the dispute. The city manager may require a written description of the dispute from either party, and may attempt to mediate and resolve the grievance with the customer and franchisee. If the dispute remains unresolved, the customer or franchisee may appeal to the city council for review and consideration of the dispute. The city council may hear and decide the dispute. Subject to judicial review, any decision of the city council will be final and binding.
- B. Hazardous and Infectious Waste: No person will place hazardous waste or infectious waste at curbside for collection or disposal by franchisee. Hazardous waste will only be disposed at collection events for that specific purpose.
- C. Construction and Demolition Waste: Construction and demolition waste set out for collection by franchisee will be separated from regular household and/or commercial solid waste. If it is a large quantity, special arrangements will be made with franchisee for the collection of the construction and demolition waste.
- D. Accumulation of Waste: No person will accumulate or store waste that is unsightly or in violation of city's nuisance ordinance, or in violation of regulations of the Oregon environmental quality commission.
- E. Safe Loading Requirements: No stationary compactor, drop box, or other receptacle, including a can, cart, or container for residential, commercial, or industrial use, will exceed the safe loading requirements designated by franchisee.
- F. Access to Receptacle: No receptacle will be located behind any locked or latched gate or inside any building or structure, unless authorized by franchisee. No person will block the access to a receptacle. Each customer will provide safe access to the solid

waste receptacle without hazard or risk to franchisee. Generators or producers of waste will clean their receptacles and keep the area around those receptacles free of accumulated waste.

- G. Can or Cart Placement: Placement of cans and carts must be within three feet of the curb, but will not restrict access to bicycle lanes or sidewalks and will not be blocked by vehicles or other items. Items not for collection must be at least three feet from cans and carts that are placed for collection. Placement of cans and carts are limited to a time period of 24 hours prior to pick up and 24 hours after pick up. Receptacles within alleys will be placed to accommodate collection vehicles.
- H. Preparation of Solid Waste: Solid waste that is placed for collection will be drained of surplus liquid and placed in a sealed, leak proof receptacle. Pet feces, sharp objects (e.g., broken glass and knives), and any other solid waste with potential for causing injury or disease will be securely wrapped in a manner to prevent exposure or injury to the public or employees of franchisee. Ashes will be allowed to cool and will be securely wrapped or bagged before being deposited in any receptacle.
- I. Solid Waste Receptacles: Receptacles for mechanical collection will be provided to the generator by franchisee, unless otherwise authorized by franchisee. The loaded weight of a receptacle will comply with the manufacturer's specifications. Except for drop boxes, receptacles will be: 1) equipped with lids sufficient to keep out water and to prevent disturbance by animals and entrance of pests, 2) kept closed, except when being filled, emptied, or cleaned, and 3) be kept in a clean, leak proof, and sanitary condition by the generator of the solid waste. When materials or customer abuse, fire, or vandalism cause excessive wear, damage, or loss of a receptacle provided by franchisee, the reasonable costs of repair or replacement may be charged to the customer.
- J. Unauthorized Removal or Entry: No person will remove solid waste placed out for collection, except the person so placing the material or franchisee. No person will enter into a receptacle for the purpose of compacting, disturbing, or scattering the contents of the receptacle. No person will use public litter receptacles for the disposal of household, commercial, or industrial waste.
- K. Customer Penalties: Any violation of subsections B, D, F, G, H, and J of this section are punishable by a penalty of up to \$500.00 per violation. Each day of continued violation is a separate offense and may be addressed in a separate action or may be joined in one action.

(Ord. No. 11-149-02, 5-24-2011)

8-3-9: - RESOURCE RECOVERY LICENSE:

- A. License Requirements: A person may make application to city for the issuance of a license to engage in resource recovery activities. The application will be in writing and will contain such information and be in such form as city will require, including a particular description of the services for which a license is sought, the manner in which the applicant proposes to provide such services, the length of time it will be provided, and such other information as city may require.
- B. Criteria for City Consideration: City will review any application submitted in accordance with subsection A of this section and determine whether there is a showing of need for such a license. City's determination of the need for the license may be based on, without limitation, the following: 1) whether franchisee is providing the same or similar service; 2) whether franchisee has been or is in the process of arranging to provide such service; 3) if franchisee is not at the time providing, nor in the process of arranging to provide, such services, whether franchisee has any objections to the granting of such license; and/or 4) whether the applicant for such license has the financial and other means to provide such services.
- C. Grant or Denial of License: The city council will consider the criteria described under subsection B of this section to assist in city's determination whether there is a showing of need for the applicable license and whether the applicant is qualified to provide such resource recovery service. If the license is granted, city may impose upon such approval and make the license subject to any reasonable requirements relating to the service under the license. To ensure continuity of the proposed service, the licensee may be required to, among other things, post a performance bond in a reasonable amount not exceeding \$10,000.00 guaranteeing that such service will be continued for such period of time as the city will determine. In addition to any other conditions city may impose, city may condition the issuance of any resource recovery license on the licensee's payment of a franchise fee to city.

(Ord. No. 11-149-02, 5-24-2011)

8-3-10: - MISCELLANEOUS:

- A.

Assignment or Transfer of Franchise: Franchisee will not assign or transfer in any manner whatsoever any franchisee obligations and/or interest in or to the franchise without city's prior written consent. Subject to the terms and conditions contained in this subsection, this chapter will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

- B. Severability and Preemption: If all or any portion of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by any county, Oregon, or federal legislation, rules, regulations, and/or decisions, the remainder of this chapter will not be affected but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining provision of this chapter will be valid and enforceable to the fullest extent permitted by law. If any laws preempt a provision or limit the enforceability of a provision of this chapter, then the provision will be read to be preempted to the extent and the time required by law.
- C. Governing Law; Venue: This chapter is made subject to the laws. Any action or proceeding arising out of or concerning this chapter will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.
- D. No Waiver: No provision of this chapter may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by city. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this chapter will be deemed a waiver of other provisions or conditions hereof.
- E. Action by the Parties: In any action mandated or permitted by city or franchisee under this chapter, including, without limitation, renegotiation of the franchise as provided in subsection 8-3-2A of this chapter, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either city or franchisee is required under this chapter, such consent will not be unreasonably withheld, conditioned, or delayed.
- F. Notices: All notices or other communications required or permitted by this chapter: 1) must be in writing (and signed by the party to be bound), 2) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties, and 3) will be considered delivered: a) upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight

delivery service (with confirmation of delivery), or b) at the end of the third business day after the date of deposit in the United States mail, postage prepaid, certified, return receipt requested.

To City: City of John Day Attn: City Manager 450 East Main Street John Day, OR 97845 Facsimile No.: 541-575-3668	To Franchisee: Clark's Disposal, Inc. Attn: Nancy Moffitt P.O. Box 355 Patterson Bridge Road John Day, OR 97845 Facsimile No.: 541-575-0432
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- G. Person and Interpretation: For purposes of this chapter, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words "include," "includes," and "including" are not limiting. The word "or" is not exclusive. Reference to "days" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.
- H. Expenses: Notwithstanding anything contained in this chapter to the contrary, franchisee will bear any and all fees, costs, and expenses incurred or arising out of franchisee's performance of its obligations under this chapter. Nothing contained in this chapter will give franchisee any credit against any ad valorem property tax levied against real or personal property within city or against any local improvement assessment or any business tax imposed on franchisee, or against any charge imposed upon franchisee, including, without limitation, any permit and inspection fees or reimbursement or indemnity paid to city.
- I.

Acceptance by Franchisee: Within 30 days after city's passage of this chapter, franchisee will file with city the written acceptance attached to the ordinance codified herein as exhibit A (the "acceptance"). If franchisee fails to timely file the acceptance with city, this franchise (and the rights granted to franchisee herein) will be null and void and will be repealed by city in all respects.

- J. Original Franchise: Franchisee and city acknowledge and agree that the term of the original franchise is extended from February 28, 2011, to the day immediately preceding the effective date hereof. The original franchise will be deemed terminated and of no further force and effect as of the day immediately preceding the effective date hereof; provided, however, the termination of the original franchise will not relieve a party of any obligations that have accrued before termination.
- K. City Default: No city act or omission will be considered a default under this chapter unless and until city has received 30 days' prior written notice from franchisee specifying with reasonable particularity the nature of the default franchisee believes exist (the "city default notice"). Commencing from city's receipt of the city default notice, city will have 30 days to cure or remedy the alleged default (the "city cure period") before city will be deemed in default of this chapter. If city is unable to cure the default within the city cure period, city will not be deemed in default under this chapter if city begins correction of the default within the city cure period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- L. Attorney Fees; No Suit or Action Filed: If this ordinance is placed in the hands of an attorney due to franchisee's breach or failure to perform any term, condition, representation, warranty, and/or covenant contained in this chapter, franchisee will pay, immediately upon demand, city's attorney fees, collection costs, and any other related associated costs, even though no suit or action in a court of law is filed thereon, and any other fees or expenses incurred by city.
- M. Attorney Fees; General: If any arbitration or litigation is instituted to interpret, enforce, or rescind this chapter, including, without limitation, any proceeding brought under the United States bankruptcy code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in

ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

- N. City Enforcement: City will enforce the provisions of this chapter by administrative, civil, and/or criminal action as necessary to obtain compliance with this chapter. Any person violating any of the provisions of this chapter will, upon conviction, be punished in accordance with the provision of section 1-4-1 of this code, in addition to any other rights or remedies provided to city under this chapter.
- O. Entire Agreement: This chapter contains the entire agreement and understanding between city and franchisee with respect to the subject matter of this chapter and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. Franchisee has not relied on any promises, statements, representations, or warranties made by city. All exhibits, schedules, instruments, and other documents referenced in this chapter are part of this chapter.

(Ord. No. 11-149-02, 5-24-2011)

CHAPTER 4 - NOISE

8-4-1: - SCOPE:

This chapter applies to all sounds originating within city's jurisdictional limits.

(Ord. No. 15-166-04, 9-22-2015)

8-4-2: - DEFINITIONS:

For purposes of this chapter, unless the context clearly requires otherwise, the following terms have the meanings assigned to them below:

CITY: The city of John Day.

CITY MANAGER: City's city manager and/or his or her designee.

COUNCIL: City then elected legislative body (i.e., the city council).

EMERGENCY: Any occurrence or set of circumstances involving actual and/or imminent

physical trauma and/or property damage demanding immediate attention.

EMERGENCY WORK: Any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, and/or work by private and/or public utilities when restoring utility service.

NOISE SENSITIVE AREA: Includes, without limitation, real property normally used for sleeping and/or normally used as a school, church, hospital, and/or public library.

PERSON: Any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, incorporated or unincorporated organization, or any other entity.

PLAINLY AUDIBLE: Any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

POLICE CHIEF: City's chief of police or his or her designee.

PUBLIC RIGHT OF WAY: Any street, avenue, boulevard, highway, sidewalk, path, trail, alley, and/or similar place normally accessible to the public that is owned or controlled by a government entity.

PUBLIC SPACE: Any real property or structures on real property owned by a government entity and normally accessible to the public, including, without limitation, parks and other recreational areas.

RESIDENTIAL AREA: Any real property that contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with city's land use regulations and zoning map, as amended from time to time.

(Ord. No. 15-166-04, 9-22-2015)

8-4-3: - GENERAL PROHIBITION:

- A. No person will make, continue, and/or cause to be made or continued:
 - 1. Any unreasonably loud or raucous noise;
 - 2. Any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within city's jurisdictional limits; and/or

3. Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

B. Factors for determining whether a sound is unreasonably loud and raucous include, without limitation, the following:

1. The proximity of the sound to sleeping facilities, whether residential or commercial;
2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
3. The time of day or night the sound occurs;
4. The duration of the sound; and/or
5. Whether the sound is recurrent, intermittent, or constant.

(Ord. No. 15-166-04, 9-22-2015)

8-4-4: - NOISES PROHIBITED:

The following acts are declared to be per se violations of this chapter. This enumeration does not constitute an exclusive list:

- A. Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any boarding facility, dwelling, place of business, or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion, or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner that will not unreasonably disturb the peace and comfort of adjacent residences or that will not detrimentally affect the operators of adjacent places of business are exempted from this provision.
- B. Vehicle Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device on any automobile, motorcycle, or other vehicle on any right of way or in any public space of

the city, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

- C. Nonemergency Signaling Devices: Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle, and/or similar device intended primarily for nonemergency purposes from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors, or by city for traffic control purposes are exempt from the operation of this provision.
- D. Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections D1 and D2 of this section.
 - 1. Testing of an emergency signaling device will occur between seven o'clock (7:00) a.m. and seven o'clock (7:00) p.m. Any testing will use only the minimum cycle test time. In no case will such test time exceed five minutes. Testing of the emergency signaling system will not occur more than once in each calendar month; provided, however, the fire department, police department, and any other public emergency service provider may test their respective signaling devices as may be reasonably necessary to ensure proper mechanical operation.
 - 2. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, will terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm will be in violation of this chapter.
- E. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any

person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and that unreasonably disturbs the peace, quiet, and comfort of neighbors and passersby, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including, without limitation, multi-family or single-family dwellings.

- F. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices: Except for public performances, gatherings, or parades for which a permit has been obtained from the city, the unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:
 - 1. Within or adjacent to residential or noise sensitive areas; and/or
 - 2. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.
- G. Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This subsection is to be applied only to those situations where the disturbance is due to the volume, duration, location, timing, or other factors and not based on the content of the communication.
- H. Animals: Unreasonably loud and raucous noise emitted by an animal for which a person is responsible. A person is responsible for an animal if the person owns, controls, and/or otherwise cares for the animal.

I.

Loading or Unloading Merchandise, Materials, and Equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

- J. Construction or Repair of Buildings; Excavation of Streets and Highways: The construction, demolition, alteration, or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 7:00 p.m., on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In nonemergency situations, the city manager may issue a permit, upon application, if the city manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m., will not be impaired, and if the city manager further determines that loss or inconvenience would otherwise result. The permit will grant permission in nonemergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.
- K. Noise Sensitive Areas; Schools, Courts, Churches, Hospitals, and Similar Institutions: The creation of any unreasonably loud or raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or that disturbs the persons in these institutions, provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.
- L. Blowers and Similar Devices: In residential or noise sensitive areas, between the hours of 9:00 p.m. and 7:00 a.m., the operation of any noise creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.
- M. Commercial Establishments Adjacent to Residential Property: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area that is part of or

under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. that is plainly audible at a distance of five feet from any residential property.

(Ord. No. 15-166-04, 9-22-2015)

8-4-5: - EXEMPTIONS:

Sounds caused by the following are exempt from the prohibitions set out in this chapter and are in addition to the exemptions specifically set forth in section 8-4-4 of this chapter:

- A. City Travelways: Motor vehicles on city's travelways provided that the prohibition of subsection 8-4-4B of this chapter continues to apply.
- B. Utility Structures: Repairs of utility structures that pose a clear and immediate danger to life, health, or significant loss of property.
- C. Sirens, Whistles or Bells: Sirens, whistles, or bells lawfully used by emergency vehicles; or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibitions contained in subsection 8-4-4D of this chapter continue to apply.
- D. Emergency: The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- E. Bridges, Streets or Highways: Repairs or excavation of bridges, streets, or highways by or on behalf of the city, Grant County, state of Oregon, or federal government between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- F. Outdoor School and Playground Activities: Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, without limitation, school athletic and school entertainment events.
- G.

Other Outdoor Events: Outdoor gatherings, public dances, shows, and sporting events, and/or other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.

(Ord. No. 15-166-04, 9-22-2015)

8-4-6: - PERMITS:

- A. In cases of emergency or other public necessity, the city manager may issue a permit allowing restricted activities or allowing time restricted activities to take place at any hour. The permit may be for the duration of the permitted activity and conditioned as necessary.
- B. The city manager may also issue a permit for a concert, gathering, or similar event allowing noise otherwise prohibited by this chapter, provided the event is otherwise permitted under this code.
 - 1. The permit may be for a single event or for a series of events.
 - 2. Applications for a noise permit will be submitted at least 45 days in advance of the date they will be needed.
 - 3. Within five days of submitting the application, the applicant will provide notice in a form approved by city to property owners and residents within 500 feet of the location where the sound will be generated. Notice may be provided by e-mail, hand delivery, door hangers, regular mail, or other means calculated to provide individual notice. City may provide additional notice of the event in its discretion.
 - 4. Any person may provide comments to the city regarding the noise permit application within 15 days of the permit application.
 - 5. The applicant will provide a statement to the city at least 30 days before the scheduled event certifying that notices have been provided as required by this section.
 - 6. City will normally issue or deny the permit at least 20 days prior to the date of the event.
 - 7. The city manager may waive any of the deadlines or time lines established by this section, and also may issue a permit notwithstanding the time lines based on his or her assessment of the factors outlined in this section. The

city manager will consider written comments in making the decision whether to issue the permit, except in the rare instance where waiving a time line makes it difficult to do so.

- C. The grant or denial of permits by the city manager may be appealed to the council within 15 days after denial or permit issuance. A permit when issued remains in effect until the council decision on the appeal unless withdrawn by the city manager.
- D. Permit applications must include contact information, including a telephone number for a responsible person who will be available at that number while the noise is being generated.
- E. Permits may include such restrictions or conditions necessary to safeguard the public peace, including maximum noise levels and time of day restrictions. Failing to obtain a permit when required or failing to comply with a permit is a violation of this chapter.

(Ord. No. 15-166-04, 9-22-2015)

8-4-7: - ENFORCEMENT:

The city manager or police chief will have primary responsibility for the enforcement of the noise regulations contained in this chapter. Nothing in this chapter will prevent the city manager or police chief from obtaining voluntary compliance by way of warning, notice, or education.

(Ord. No. 15-166-04, 9-22-2015)

8-4-8: - PENALTIES:

- A. A person who violates a provision of this chapter is guilty of violation punishable by a fine not to exceed \$500.00 per violation. In addition, city may pursue any other remedy available at law, including seeking a court injunction, and such remedies will be cumulative. Each occurrence of a violation or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately. In addition to any other rights or remedies provided under this chapter, the city may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, city's reasonable attorney fees and other fees, costs, and expenses incurred by the city to enforce this chapter.

B.

In addition, noises and activities prohibited by this chapter may be deemed a nuisance and/or violation and subject to the restrictions, abatement process, and penalties set forth in chapter 2 of this title and any other code provisions. If a conflict between any provision of this chapter and any other provision of the code occurs, the two provisions will be harmonized to the extent possible.

(Ord. No. 15-166-04, 9-22-2015)

CHAPTER 5 - PROHIBITION OF MARIJUANA ESTABLISHMENTS

8-5-1: - SHORT TITLE:

This chapter may be referred to as the MARIJUANA BANNING ORDINANCE and will be cited and referred to herein as this "chapter."

(Ord. No. 15-164-02, 8-11-2015)

8-5-2: - PURPOSE:

The purpose of this chapter is to minimize any adverse public safety and health impacts that may result from allowing marijuana establishments to operate in city's jurisdictional limits.

(Ord. No. 15-164-02, 8-11-2015)

8-5-3: - PROHIBITED ESTABLISHMENTS; SALES:

A. Establishments Prohibited: City hereby prohibits (bans) the establishment of the following in any area subject to city's jurisdiction (collectively, the "ban"): 1) marijuana processing sites required to be registered under section 85, chapter 614, Oregon laws 2015; 2) medical marijuana dispensaries required to be registered under Oregon Revised Statutes 475.314; 3) marijuana producers required to be licensed under section 19, chapter 1, Oregon laws 2015; 4) marijuana processors required to be licensed under section 20, chapter 1, Oregon laws 2015; 5) marijuana wholesalers required to be licensed under section 21, chapter 1, Oregon laws 2015; 6) marijuana retailers required to be licensed under section 22, chapter 1, Oregon laws 2015; and/or 7) any combination of the entities described in this subsection.

B.

Limited Marijuana Retail Product Sales Prohibited: Without otherwise limiting the marijuana ban provided under subsection A of this section, the city hereby prohibits the sale of limited marijuana retail products through medical marijuana dispensaries in any area subject to the city's jurisdiction. "Limited marijuana retail product" means the seeds of marijuana, the dried leaves and flowers of marijuana, and a marijuana plant that is not flowering.

(Ord. No. 15-164-02, 8-11-2015)

8-5-4: - BAN APPLICATION:

The ban imposed under this chapter applies to any decision, action, and/or recommendation by the city, including, without limitation, the issuance of building permits, land use permits, business and regulatory licenses, and/or any other form of approval. This ban extends to any decision by the Oregon health authority ("OHA") acting under Oregon Revised Statutes 475.314, as amended, and/or section 85, chapter 614, Oregon laws 2015. This ban extends to any decision by the Oregon liquor control commission ("OLCC") acting under sections 19, 20, 21, and/or 22, chapter 1, Oregon laws 2015.

(Ord. No. 15-164-02, 8-11-2015)

8-5-5: - ENFORCEMENT; PENALTIES:

This ban will be enforced by any sworn peace officer authorized to enforce the laws of the city and/or any other city official authorized to administer city's land use, development, nuisance, and/or building regulations. In addition, the city may initiate appropriate suit or legal action in a court of competent jurisdiction to enforce this chapter. Any violation of this chapter is punishable by a fine not to exceed \$500.00 per violation. The city will be entitled to collect from any person violating this chapter city's attorney fees and other fees, costs, and expenses incurred by city to enforce this chapter. Each violation, and each day that a violation continues, constitutes a separate civil infraction. The remedies available under this chapter are not exclusive of any other remedies available under any applicable federal, state, and/or local laws, regulations, and/or ordinances. It is within the discretion of city to seek cumulative remedies for a violation of the ban.

(Ord. No. 15-164-02, 8-11-2015)

TITLE 9 - FIRE REGULATIONS

CHAPTER 1 - FIRE PREVENTION CODE

9-1-1: - ADOPTION OF UNIFORM FIRE CODE:

There is hereby adopted by the City for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Uniform Fire Code recommended and copyrighted by the Western Fire Chiefs Association and the International Conference of Building Officials, 1976 Edition, and the whole thereof, including Appendices A, B, C, D, E, G and H, save and except such portions as are hereinafter deleted, modified or amended by Section 9-1-5 of this Chapter, of which Code not less than three copies have been and are now filed in the office of the City Recorder, and the same are hereby adopted and incorporated as fully as if fully set forth herein, and from the effective date hereof shall be controlling within the limits of the City.

9-1-2: - ESTABLISHMENT AND DUTIES OF BUREAU OF FIRE PREVENTION:

- A. The Uniform Fire Code shall be enforced by the Bureau of Fire Prevention in the Fire Department of the City which is hereby established and which shall be operated under the supervision of the Chief of the Fire Department.
- B. Wherever the term "Chief of the Bureau of Fire Prevention" is used in the Uniform Fire Code, it shall be held to mean the Chief of the Fire Department of the City.
- C. The Chief in charge of the Bureau of Fire Prevention shall be appointed by the City Administrator on the basis of examination to determine his qualifications.
- D. The Chief of the Fire Department may detail such members of the Fire Department as inspectors as shall from time to time be necessary. The Chief of the Fire Department shall recommend to the City Administrator the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the Fire Department, and appointments made after examination shall be for an indefinite term with removal only for cause.

9-1-3: - DEFINITIONS:

- A. Wherever the word "jurisdiction" is used in the Uniform Fire Code, it shall be held to

mean the City of John Day.

- B. Wherever the term "Corporation Counsel" is used in the Uniform Fire Code, it shall be held to mean the Attorney for the City of John Day.

9-1-4: - STORAGE OF EXPLOSIVES RESTRICTED, LIMITS OF DISTRICTS:

- A. Combustible Liquids in Outside Aboveground Tanks: The limits referred to in section 15.601 of the Uniform Fire Code, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows: New bulk plants for flammable or combustible liquids shall only be allowed in an industrial zone of the City of John Day. The plans therefor shall be approved by the Fire Chief.
- B. Bulk Storage of Liquefied Petroleum Gases:
 - 1. In addition to the limits referred to in section 20.105(a) of the Uniform Fire Code, for bulk storage of liquefied petroleum gas, such use shall be restricted to an industrial zone of the City of John Day. Plans for the storage of liquefied petroleum gas shall be approved by the Fire Chief.
 - 2. No storage of liquefied natural gas shall be permitted in the City.
- C. Explosives and Blasting Agents: In addition to the limits referred to in section 11.106 (p) of the Uniform Fire Code, for storage of explosives and blasting agents, the following restriction is imposed: The designated parking space for vehicles transporting explosives is approximately two and six-tenths miles east of John Day on Highway 26 and about one-half mile west of what is known as the Crown Ranch on the State of Oregon property on the south side of U.S. Highway 26.

9-1-5: - AMENDMENTS TO UNIFORM FIRE CODE:

The Uniform Fire Code is amended and changed in the following respects for purposes of this Chapter:

Code section 1.216, Compliance With Recognized Standards, is hereby amended by adding thereto the following publication:

The Insurance Service Office, Municipalities Guide for Determining Required Fire Flows.

Code section 1.301, Permits, is hereby amended by adding thereto the following provisions:

(c)

The plans and specifications for any new building, or the remodeling of an existing building with an estimated 50 percent of true cash value, shall be submitted to the Bureau of Fire Prevention for review and approval by the Fire Chief prior to the issuing of the building permit by the City.

(d) There shall be no cost for these permits issued under section 1.301.

Code section 1.403, Definitions, is hereby amended by adding thereto the following provisions:

Automatic Fire Extinguishing System shall mean a system which automatically detects a fire and extinguishes it and at the same time activates a fire alarm signal device both locally and at the Fire Dispatch Center.

Code section 1.408, Definitions, is hereby amended by adding thereto the following provisions:

Fire flow is the rate of flow required for firefighting purposes to confine a major fire to a building or buildings within a block or other group complex. The determination of this flow depends upon the size, the construction, occupancy and exposures of the building or buildings within and surrounding the block of group complexes.

Code section 1.414, Definitions, is hereby amended by adding thereto the following provision:

Liquefied Natural Gas (L.N.G.) shall mean natural gas in a liquid state.

Code section 13.301(c), Installation of Fire Protection, Life Safety Systems and Appliances, is hereby amended by adding thereto the following provisions:

No buildings are to be built in the City of John Day, where the water mains have already been installed, if such buildings require a fire flow in excess of 100% more than is available from the fire hydrants in the area. Where the building's fire flow requirements are in excess of 100% of that available from the fire hydrants in the area, consideration shall be given to structure separation, installation of automatic fire extinguisher systems, fire walls, installing more fire hydrants, installing larger water mains, installing loops in the water system or other recognized elements to reduce the amount of required fire flow, to no more than 100% of that available.

The installation and maintenance of fire walls, automatic extinguisher systems shall be accomplished in accordance with the City Building Code. The cost of reducing the required fire flow or the increase in water available for fire flow shall be borne by the builder or subdivider. The City of John Day reserves the right to participate with material or labor costs if the City so chooses.

The following is the required minimum fire flow in any new subdivision based on the zoning of that area:

R-7 — 1,000 gallons per minute.

R-10 — 750 gallons per minute.

C — 3,000 gallons per minute.

I — 3,000 gallons per minute.

The Chief of the Bureau of Fire Prevention shall cause fire flows to be estimated for each new or remodelled building, groups of buildings, occupancy or additions in accordance with the current edition of Guide for Determination of Required Fire Flow published by the Insurance Service Office, Municipal Survey Service or other nationally recognized methods. Results of the required fire flow estimate will be applied to insure that the firefighting capability of the City's Fire Department and capability of the City of John Day to provide adequate amounts of water for fire suppression purposes are not exceeded.

Code section 13.307(a) is hereby amended by deleting therefrom in its entirety subsection (a) and substituting therefor the following provisions:

Every apartment house two stories or more in height, and containing more than four apartments, and every hotel and motel one story or more in height and containing five or more guest rooms, shall have installed therein an approved manually operated fire alarm system designed to warn the occupant(s) and notify the fire dispatcher in the event of a fire.

Such fire alarm systems shall have smoke detectors installed in the hall ways and corridors. All fire alarm systems shall be so designed that all occupants of the building may be warned simultaneously. Any building other than a private home used for the purpose of sleeping shall conform to this section. Any existing apartment house,

hotel, motel and other building used for the purpose of lodging shall be made to conform to this Code upon sale of property whether by deed, contract or other legally documented transaction.

Code section 13.307(b) is hereby amended by deleting therefrom in its entirety subsection (b).

Code section 13.307 is hereby amended by adding thereto the following provisions:

- (e) All commercial, industrial and public buildings from 3,000 square feet to 8,000 square feet shall have an automatic fire alarm system installed and connected to the fire dispatch office. The automatic fire alarm system used in building(s) other than for the purpose of lodging may be connected to the alarm answering system now installed in the fire dispatch office.

All commercial, industrial and public buildings exceeding 8,001 square feet shall have an automatic fire extinguishing system with an alarm going to the fire dispatch center. All commercial, industrial and public buildings over two stories in height from the street grade shall have an automatic fire extinguisher system throughout regardless of the number of square feet in the building.

Code section 13.307 is hereby amended by adding thereto the following provisions:

- (f) All basements over 500 square feet in a public, commercial or industrial building shall have an automatic fire extinguishing system.
- (g) All basements used by or open to the public regardless of the occupancy shall have an automatic fire alarm system and an automatic fire extinguishing system.
- (h) Code subsections (e), (f) and (g) pertain to construction done after the effective date of this Chapter.

All automatic fire extinguishing systems shall automatically notify the Fire Department dispatch office when the system has been activated.

Code section 20.100 is hereby amended by adding thereto the following provisions:

The storage of liquefied natural gas is prohibited in the City of John Day.

Code section 27.302, False Alarms, is hereby amended by adding thereto the following provisions:

When any alarm has been the result of arson or a malicious false alarm, the City of John Day shall recover from the responsible person or persons a cost for the alarm(s) using the following rates: \$100.00 per hour for each motorized piece of equipment at the fire scene plus \$10.00 per hour for each firefighter at the fire scene and on standby at the fire station. This would also cover any mutual aid fire department or fire organization and their firefighters.

(Ord. No. 80-16-4, 6-24-80; Ord. No. 81-27-7, 8-11-81)

9-1-6: - NEW MATERIALS, PROCESSES OR OCCUPANCIES WHICH MAY REQUIRE PERMITS:

The City Administrator, the Chief and an Assistant Fire Chief shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in said Code. The Chief of the Bureau of Fire Prevention shall distribute copies thereof to interested persons.

9-1-7: - APPEALS:

Whenever the Chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision to a committee of three members, consisting of one public member, one Council member and the City Administrator, appointed by the Mayor within 30 days from the date of the decision appealed and whose decision shall be the City's final decision.

9-1-8: - NONCONFORMING USES:

Provisions of this Chapter shall not apply to buildings or structures existing at the time of the effective date hereof, except as expressly otherwise provided in Section 9-1-5 of this Chapter.

9-1-9: - PENALTY:

- A. Any person who shall violate any of the provisions of this Code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate of permit issued

thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by a court of competent jurisdiction, within the time fixed herein shall, upon conviction, be punished in accordance with the provisions of Section 1-4-1 of this Code.

- B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 80-16-4, 6-24-80)

CHAPTER 2 - FIREWORKS

9-2-1: - FIREWORKS; ADOPTION OF STATE LAW:

The following enumerated sections of the Oregon Fireworks Law, together with all acts and amendments applicable to cities which are now or hereafter enacted, are hereby adopted by reference and made a part of this Chapter:

ORS 480.110

ORS 480.120

ORS 480.130

ORS 480.140(1)

ORS 480.150

ORS 480.170

(Ord. No. 67-2, 2-14-67)

TITLE 10 - POLICE REGULATIONS^[1]

CHAPTER 1 - GENERAL OFFENSES

10-1-1: - DEFINITIONS:

Except where the context indicates otherwise, the singular number includes the plural and

the masculine gender includes the feminine, and the following mean:

CITY: The City of John Day.

COUNCIL: The governing body of the City.

MINOR: Any person under the age of 18 years, unless the person is lawfully married or legally emancipated. ^[2]

PERSON: Every natural person, firm, partnership, association or corporation whether he or it is acting for himself or itself or as the clerk, servant, employee or agent of another.

PUBLIC PLACE: A building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

10-1-2: - OFFENSES AGAINST PUBLIC PEACE:

10-1-2-1: - ASSAULT AND BATTERY:

No person shall knowingly or recklessly cause physical injury to another person.

10-1-2-2: - DRUNKENNESS:

- A. No person shall drink any intoxicating liquor in any public place where consumption of alcoholic beverages is generally prohibited or specifically prohibited by posted notice. ^[3]
- B. No person shall drink any intoxicating liquor in a motor vehicle in a public place. ^[4]

10-1-2-3: - DISORDERLY CONDUCT:

- A. No person shall disturb the peace, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, by any of the following acts:
 - 1. Engaging in fighting or violent, tumultuous or threatening behavior; or
 - 2. Making unreasonable noise; or
 - 3. Using abusive or obscene language or making an obscene gesture in a public place; or
 - 4. Disturbing any lawful assembly of persons without lawful authority; or
 - 5. Obstructing vehicular or pedestrian traffic on a public way; or

6. Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or
 7. Initiating or circulating a report, knowing it to be false concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
 8. Creating a hazardous or physically offensive condition by any act which he is not licensed or privileged to do.
- B. No person shall knowingly permit disorderly conduct on any premises owned or controlled by him.
- C. No person shall without good cause, while on the premises of a drive-in restaurant, drive-in bank, drive-in theater, drive-in business, public parking facility or other public or private property where parking or drive-in facilities are offered or extended to public use, race the motor of a motor vehicle; bring to a sudden start or stop any motor vehicle; impede the orderly movement of vehicles or pedestrian traffic; ⁽⁵⁾ blow any horn; make or cause to be made any loud, boisterous, rude, indecent, vulgar or profane words toward another person; or deface or damage the property of another. Any person who commits such acts shall be deemed guilty of disorderly conduct.
- D. When the owner, lessee or other person in lawful charge of real property, or a police officer acting on the request of the owner, lessee or other person in lawful charge of real property, requests any person other than the owner, lessee or person in lawful possession of real property to leave such premises and such person requested to leave, without good cause or reason, refuses immediately to comply with such request, the person so refusing to comply with such request shall be deemed guilty of disorderly conduct.

10-1-2-4: - DISTURBANCE OF LAWFUL ASSEMBLIES:

No person shall knowingly interrupt or disturb any lawful assembly, either public or private, by any offensive acts committed within such assembly or so near the same as to disturb the order of the meeting.

10-1-3: - OFFENSES AGAINST PUBLIC SAFETY:

10-1-3-1: - CONCEALED WEAPONS:

No person other than an authorized peace officer or person licensed pursuant to ORS 166.290, as now or hereafter amended, shall carry concealed on or about his person in any manner any revolver, pistol, other firearm, knife other than an ordinary pocketknife with a blade less than three and one-half inches long, dirk, dagger, stiletto, metal knuckles or weapon, the use of which could inflict injury upon a person or property.

10-1-3-2: - DISCHARGE OF WEAPONS:

- A. No person other than an authorized peace officer shall fire or discharge a gun or other weapon, including spring or air-actuated pellet guns, air guns or B-B guns or weapon which propels a projectile by use of gunpowder or other explosive, jet or rocket propulsion.
- B. The provisions of this Section shall not be construed to prohibit the firing or discharging of a weapon by any person in the defense or protection of his property, person or family.

10-1-3-3: - ESCAPE OF PRISONERS FROM CUSTODY:

- A. No person shall aid or attempt to aid in the escape of a confined prisoner or make available or provide anything calculated to aid in such escape.
- B. No person shall knowingly aid an escaped prisoner by offering shelter, clothing, food or any other thing or service which would aid or abet the escape of such prisoner.
- C. No person shall, while in custody, or while a prisoner in the City jail or in any other place where prisoners are kept or confined, escape or attempt to escape from such custody or confinement.

10-1-3-4: - INTERFERENCE WITH POLICE:

- A. No person shall hinder, delay, obstruct, resist or refuse to assist any police officer or person duly empowered with police authority who is acting in the discharge of his duty.
- B. No person shall offer or endeavor to assist any person to escape or attempt to escape from the custody of a police officer or other person duly empowered with police authority.
- C.

No person shall deliver any intoxicating liquor or narcotic drug to any person confined in the City jail, or attempt to convey or deliver to any such person any article without the permission and consent of the officer in charge.

- D. No person shall impersonate, falsely assume or pretend to be a law enforcement officer.
- E. No person shall use or permit the use of property for planning or promoting criminal activities or for violation of City ordinances.
- F. No person shall operate any generator or electromagnetic wave or cause a disturbance of such magnitude as to interfere with the proper functioning of any police radio communication system of the City.
- G. No person shall knowingly make or file with the Police Department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any offense or crime.

10-1-3-5: - FIRE CONTROL:^[6]

- A. No person shall intentionally give any false alarm of fire or aid or abet in the commission of such an act.
- B. No person shall lead, ride or drive any horse or other animal or operate any vehicle over or upon any fire hose, or disturb or injure in any manner any hose, engine, appliance or apparatus belonging to or used by the Fire Department.
- C. No person at a fire shall conduct himself in a disorderly manner or refuse to obey promptly any order of any member of the Fire Department or resist, obstruct or hinder any member of the Fire Department.
- D. No person, unless authorized by the Fire Chief, shall unfasten, open, draw water from or otherwise interfere with any fire hydrant.

10-1-3-6: - NARCOTICS AND BARBITURATES:

No person shall, without proper authority, sell or possess for any purpose whatsoever any narcotic drugs or dangerous drugs as defined by the State of Oregon. ^[7]

10-1-3-7: - OBSTRUCTING PASSAGEWAYS:^[8]

- A.

No person shall, except as otherwise permitted by ordinance, obstruct, cause to be obstructed or assist in obstructing pedestrian or vehicular traffic on any sidewalk or street.

- B. The provisions of this Section shall not apply to the delivery of merchandise or equipment. No owner or person in charge of property shall permit such merchandise or equipment to remain on any street or sidewalk beyond a reasonable time.
- C. No owner or person in charge of property shall permit any merchandise, equipment or other obstruction to remain on any street or sidewalk beyond a reasonable time.
- D. No person shall use any street or sidewalk, or any portion thereof, for selling, storing or displaying merchandise or equipment except as may otherwise be provided by ordinance.
- E. No unauthorized person shall deposit any earth, gravel or debris upon any street or sidewalk.

10-1-4: - OFFENSES INVOLVING MORALS:

10-1-4-1: - ANIMALS:^[9]

- A. No person shall torture, abandon, mutilate or needlessly kill any animal or bird. No person shall transport or permit any animal to be transported in a cruel and inhumane manner.
- B. No person shall fail to provide any animal in his custody with food, drink and protection from the elements.
- C. No person shall place or distribute any poison or other substance with the intent of poisoning any animal, except those animals commonly recognized as pests or rodents.

10-1-4-2: - BURGLARS' TOOLS:

No person shall possess any burglary tools, as defined by State Statute, with the intent to use the tools or knowing that some person intends to use the tools to commit or facilitate a forcible entry into premises or theft by a physical taking.

10-1-4-3: - BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY:

No person shall buy, receive, conceal or attempt to buy property that is known or should be

known to such person to have been stolen.

10-1-4-4: - SALE OR PLEDGE OF PROPERTY OF DRUNKS:

No person shall purchase property from, advance or loan money to, or have dealings respecting the title to property with a person who is in an intoxicated condition or under the influence of a controlled substance. ^[10]

10-1-4-5: - DISORDERLY HOUSES:^[11]

A. "Disorderly house" means any house or place kept or maintained for the purpose of prostitution, unlicensed or illegal gambling, including any place, room or building used for the consumption, sale or disposition of liquor or controlled substances contrary to law.

"Prostitution" means engaging in or offering or agreeing to engage in sexual conduct or contact, as defined in ORS 167.002(4) and (5), in return for a fee, or paying or offering to pay a fee to engage in such sexual conduct or contact.

B. No person shall establish, maintain or aid in the establishment or maintenance of a disorderly house as that term is defined in subsection A of this Section.

C. No person shall knowingly visit or frequent any disorderly house; provided, that this Section shall not apply to physicians and officers acting in the discharge of their professional duties.

D. No person shall knowingly lease any building under his control for the purpose of permitting the establishment of a disorderly house. Any person whose property has been leased and is used as a disorderly house shall, upon learning of its use, immediately take appropriate action to oust the occupants thereof.

E. No person shall solicit or entice another person to visit or enter a disorderly house.

10-1-4-6: - GAMBLING:^[12]

A. The term "gambling" means the use or possession of any game, machine, device or contest, whether played for money, check, credit or other representative of value, in which the element of chance is controlling, in which a charge is made to participate, and in which the winner is selected primarily on the basis of chance.

B. No person shall participate in, operate or assist in operating any gambling game or

activity, including a lottery.

- C. No person shall have in his possession any property, instrument or device designed or adapted for use in any type of gambling activity. Any such property, instrument or device is a nuisance and may be summarily seized by any police officer. Upon conviction of the person owning or controlling such property for a violation of this Section, the Municipal Judge shall order such property confiscated and destroyed and the money found in the machines deposited in the City General Fund.

10-1-4-7: - IMMORAL PRACTICES:

No person shall engage in obscene or other related conduct to the extent defined in and proscribed by provisions of ORS 167.060 to 167.100.

10-1-4-8: - PROSTITUTION:^[13]

- A. No person shall engage in the practice of prostitution as defined in subsection 10-1-4-5A of this Code.
- B. No person shall in any manner solicit any person for the purpose of prostitution.
- C. No person shall knowingly transport or offer to transport any other person to any place or building for the purpose of prostitution.
- D. No person shall bring together, offer to bring together, or aid in bringing together in any manner two or more persons for the purpose of prostitution.
- E. No person shall solicit, request, entice or attempt to entice any female person to become a prostitute or to enter a place of prostitution.

10-1-4-9: - DEFRAUDING OF INNKEEPERS:

- A. No person shall, with intent to defraud, obtain any food, lodging or other accommodations at any hotel, apartment house, boarding house, tourist camp, trailer camp or restaurant.
- B. No person shall, after having obtained food, lodging or other accommodation at any hotel, apartment house, boarding house, tourist camp, trailer camp or restaurant, surreptitiously remove his baggage and clothing from such hotel, apartment house, boarding house, tourist camp, trailer camp or restaurant without first paying or tendering payment for such food, lodging or other accommodation.

10-1-4-10: - LODGING ACCOMMODATIONS:

- A. No person shall write, cause to be written or knowingly permit to be written, in any register in any hotel, lodging house, rooming house or other place where transients are accommodated in the City, any other or different name or designation than the true name or designation of the person so registered, or the name or designation by which such person is generally known.
- B. No proprietor, manager or other person in charge of a hotel, lodging house, rooming house or other place where transients are accommodated shall rent or assign rooms for joint and private occupancy by persons of the opposite sex:
 - 1. Unless such persons are registered as husband and wife, or as parent and minor child or unless such persons are all over the age of 18 years.
 - 2. If, notwithstanding the lawful appearance of the registration, he has reasonable cause to believe such transients are not husband and wife or parent and minor child or unless such persons are all over the age of 18 years.

10-1-4-11: - OCCULT ARTS:

- A. The term "occult arts" means the use or practice of fortunetelling, astrology, phrenology, palmistry, clairvoyance, mesmerism, spiritualism or any other practice or practices generally recognized to be unsound and unscientific whereby an attempt or pretense is made:
 - 1. To reveal or analyze past incidents or events.
 - 2. To analyze or define the character or personality of a person.
 - 3. To foretell or reveal the future.
 - 4. To locate by such means lost or stolen property.
 - 5. To give advice or information concerning any matter or event.
- B. No person shall for hire or profit engage in any practice of occult arts, either public or private, as that term is described and defined in subsection A of this Section.
- C. Nothing in this Section shall be construed to prohibit or prevent:
 - 1. Any duly organized and recognized religious organization which promulgates religious teachings or beliefs involving spiritualism or similar media from holding its regular meetings or service.
 - 2.

Any school, church, fraternal, charitable or other benevolent organization from utilizing occult arts for any bazaar or money-raising project, provided that all money so received is devoted wholly and exclusively to the organization sponsoring such affair. In such case the money so received shall be considered as a donation for benevolent and charitable purposes.

10-1-4-12: - VAGRANCY:

- A. No person shall be a vagrant as that term is defined in subsection B of this Section.
- B. "Vagrant" shall mean:
 - 1. Every beggar.
 - 2. Every idle or dissolute person who lodges in any place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof.
 - 3. Every lewd or dissolute person who lives in or about a disorderly house, as defined in Section 10-1-4-5A of this Chapter.
 - 4. Every prostitute.
 - 5. Every person who keeps or maintains a place or establishment where lost or stolen property is concealed.
 - 6. Every person who conducts himself in a disorderly manner, as defined in Section 10-1-2-3 of this Chapter.
 - 7. Every person who by the common law is classified as a vagrant whether included in the foregoing classification or not.

10-1-4-13: - LIQUOR:

- A. Definition: As used in this Section, the term "alcoholic liquor" means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being. ^[14]
- B. State Law Adopted: The provisions of the Oregon Liquor Control Act ^[15] and all regulations adopted by the Oregon Liquor Control Commission ^[16] relating to alcoholic liquor are adopted as part of this Section, excepting only as otherwise lawfully provided by this and other ordinances of the City. It shall be unlawful for any person within the limits of the City to fail to comply with any provisions of the Oregon Liquor Control Act or the regulations of the Oregon Liquor Control Commission.

C. Minors. ^[17]

1. No person other than his or her parent or guardian shall sell, give, or otherwise make available any alcoholic liquor to any person under the age of 21 years.
2. No person who is the owner, lessee, tenant, occupant, possessor or the agent or employee thereof, of property or premises in such person's possession or control, shall allow, permit or suffer any person under the age of 21 years to consume any alcoholic liquor upon such premises or property, to be upon such premises or property while under the influence of intoxicating liquor, or to be upon said property or premises while in the possession of alcoholic liquor, whether or not the person under 21 years of age is accompanied by, and in the presence of his parent or guardian.
3. No person under the age of 21 years shall purchase alcoholic liquor. No person under the age of 21 years shall acquire, consume, have in his possession, or be under the influence of alcoholic liquor, except as provided in subsection C5 of this Section.
4. No person, including a minor, shall, for the purpose of securing any right, benefit or privilege denied minors by this Section, represent falsely that he is of any age other than his true age, or represent falsely a minor to be 21 years of age or older.
5. Nothing in this Section shall be construed as prohibiting a parent or guardian of a minor from giving such minor alcoholic liquor and permitting him to consume the same within the home of such parent or guardian, or at such other private place not in view of the public where the parent or guardian is present.
6. No minor, either for himself or as agent or employee of another, shall sell, offer for sale, or deliver any alcoholic liquor, nor shall any person employ, hire or engage any minor to sell, offer for sale or deliver any such liquor.

D. Interdiction Order: No person under an order of interdiction shall possess, purchase or offer or attempt to purchase any alcoholic liquor.

E. License Required: No person shall sell, solicit, peddle or take orders for alcoholic liquor unless such person has a license from the Oregon Liquor Control Commission. No person shall sell or offer for sale, in any manner or to any person, alcoholic liquor other than as his license permits. ^[18]

F. Sales Restrictions:

1. No person or licensee of the Oregon Liquor Control Commission holding a license from such Commission permitting only the sale and consumption of malt beverages shall knowingly permit any alcoholic liquor containing more than eight percent of alcohol by weight to be brought upon or be consumed upon the premises.
2. No person shall sell for consumption on the premises any alcoholic liquor during the time the polls are open on any day on which an election is held throughout the State.
3. No person shall keep, sell, give away, or otherwise dispose of or consume any alcoholic liquor in any public dance hall or in any room or building used for public dancing.

G. Consumption in Public Places: No person shall drink or consume any alcoholic liquor in or upon any public street, public place, alley, park, school grounds or other public grounds unless such public place is so licensed.

H. Licensee Responsible: Each licensee of the Oregon Liquor Control Commission shall be responsible for his licensed premises and liable to prosecution for any violation of any provision of this Section pertaining to his licensed premises and for any act or omission of any servant, agent or employee of such licensee in violation of any provision of this Section.

I. Arrest of Violator: Whenever any officer arrests any person for violation of any of the provisions of this Section, he shall take into his possession all alcoholic liquor and other property which the person so arrested has in his possession or on his property or premises, which is apparently being used in violation of this Section. If the person so arrested is convicted and it is found that the liquor and other property has been used in violation of this Section, the same shall be forfeited to the City or the Oregon Liquor Control Commission.

10-1-5: - OFFENSES AGAINST PROPERTY:

10-1-5-1: - TRESPASS:

No person shall trespass upon any real or personal property belonging to the City or any person within the City.

10-1-5-2: - THEFT:

No person shall commit theft as that act is defined by Oregon Statute.

10-1-5-3: - DESTRUCTION OF OFFICIAL NOTICES AND SIGNS:

No person, without proper authority, shall wilfully deface, alter, remove or tear down any official notice or bulletin, or any official sign, signal or barricade posted or placed in conformity with the law.

10-1-5-4: - INJURY TO OR REMOVAL OF PROPERTY:

- A. No person, without proper authority, shall cut, remove, deface or in any manner injure or damage real or personal property of the City within or without the corporate limits.
- B. No person, without proper authority, shall cut, destroy, remove or injure any plant, flower, shrub, tree or bush growing upon any property owned or controlled by the City within or without the corporate limits.
- C. No person, without proper authority, shall wilfully deface, injure, tamper with, break or destroy any property, real or personal, belonging to or under the control of another.
- D. No person shall ride or permit a horse on public property except upon a road or other area where a motor vehicle may be lawfully operated. ^[19]

10-1-5-5: - SIDEWALKS:^[20]

- A. No person or group of persons shall gather or stand upon a sidewalk or public pathway in such a manner as to prevent, impede or obstruct the free passage of pedestrian traffic.
- B. No person or group of persons shall fail or refuse to move on or disperse when lawfully ordered to do so by a police officer.
- C. No person shall permit a cellar door or grate located in or upon a sidewalk to remain open except when such entrance is being used and, when being used, such entrance shall have adequate safeguards to protect pedestrians using the sidewalk.

10-1-5-6: - TAKING, RETENTION OR MUTILATION OF PUBLIC RECORDS:

- A. No person, without proper authority, shall take or remove any public record, document, book, paper or personal property of any kind owned by the City.
- B. No person, without proper authority, shall mutilate or destroy any public record, document, book or paper on file or kept on record in any public office of the City.
- C. No person shall retain any public record, document, book or paper after lawful demand has been made for the return thereof.

10-1-6: - EXPECTORATION:

No person shall expectorate upon any sidewalk or street, or on or in any public building except in receptacles provided for that purpose.

10-1-7: - PENALTY:

Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be punished in accordance with the provisions of Section 1-4-1 of this Code.

(Ord. No. 67-2, 2-14-67; amd. 1981 Code)

CHAPTER 2 - MINORS

10-2-1: - CURFEW:

10-2-1-1: - CURFEW HOURS, AGE RESTRICTION:

No minor under the age of 18 years shall be in or upon any street, highway, park, alley or in any business establishment between the hours of 10:00 p.m. and 5:00 a.m. except on Friday nights and Saturday nights when the prohibited hours shall be between the hours of 12:00 Midnight and 5:00 a.m., unless such minor is accompanied by a parent, guardian or other person 21 years of age or over and authorized by the parent or by law to have the care and custody of the minor, or unless such minor is then engaged in lawful pursuit or activity which requires his presence in such public places during the hours specified in this Section. ^[21]

10-2-1-2: - PARENTAL RESPONSIBILITY:

No parent, guardian or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, highway, park, alley or within any business establishment between the hours specified in Section 10-2-1 hereof except as otherwise provided in that Section.

10-2-2: - OFFENSES AFFECTING MINORS:^[22]

10-2-2-1: - MINORS GENERALLY:

- A. Contribute to Delinquency: No person shall wilfully do any act which causes or tends to cause a minor to become dependent or delinquent as dependency or delinquency is or may be defined by the laws of the State of Oregon. ^[23]
- B. Employment in Beer Parlor: No person shall employ a minor in or about a beer parlor, liquor establishment, cardroom, poolroom, shooting gallery or dance hall.
- C. Loitering in Pool, Billiard Room: No minor shall enter, visit or loiter in or about a poolroom, billiard room, cardroom, tavern or bar in any of which an alcoholic beverage is offered for sale. No person operating or assisting in the operation of such a place may permit a minor to loiter therein or permit such minor to engage in any game of cards, billiards, pool, dice, pinball, darts, games of like character or games of chance either for amusement or otherwise.
- D. Cigars, Cigarettes and Tobacco:
 - 1. No person shall sell, barter, trade, give or in any manner furnish to a person under the age of 18 years for his consumption, cigars, cigarettes or tobacco in any form or any compound in which tobacco forms a component part.
 - 2. No person under the age of 18 years shall smoke, use or possess a cigar, cigarette or tobacco in any form in any public place.
- E. Misrepresenting Age: No person shall falsely represent his age in order to obtain cigars, cigarettes or tobacco or in order to engage in games or loiter in places prescribed by subsection C of this Section.
- F. Purchasing from Minors: No person shall purchase property or an article of value from a minor or have dealings respecting the title of property in the possession of minor without the written consent of the parent or guardian of such minor.
- G. "Minor" Defined: For purposes of this Section, "minor" means any person under the

age of 18 years, unless the person is lawfully married or legally emancipated.

(Ord. No. 67-2, 2-14-67; amd. Ord. No. 69-1, 3-11-69; 1981 Code)

10-2-2-2: - CHILDREN CONFINED IN VEHICLES:

- A. No person who has under his control or guidance a child under ten years of age shall at any time leave, lock, confine or permit such child to be left, locked or confined unattended in any vehicle on the streets, alleys or public ways for a period of time longer than ten consecutive minutes.
- B. It shall be lawful and the duty of a policeman or other peace officer, finding a child or children confined in violation of the terms of this Section, to enter such vehicle and remove such child, using such force as is reasonably necessary to effect an entrance to the vehicle or place where such child may be confined in order to remove the child.

(Ord. No. 67-2, 2-14-67)

CHAPTER 4 - PUBLIC DANCES

10-4-1: - PEACE OFFICERS, ATTENDANCE REQUIRED:

- A. The sponsor of any public dance held within the corporate limits of the City shall provide, at the expense of said sponsor under contract with the City, attendance of at least two uniformed peace officers throughout the duration of any said public dance.
- B. "Public dance" shall include any gathering open to the general public for a fee or any other consideration providing music and/or dancing, whether at public or private facilities; specifically excluding, however, such activities at licensed restaurants and lounges, or when sponsored by public schools at school buildings or other facilities.
- C. Costs, if any, for attendance of peace officers, and the terms, provisions and conditions therefor, shall be established pursuant to contract to be prepared and provided by the City.

(Ord. No. 80-13-1, 4-8-80)

TITLE 11 - MOTOR VEHICLES AND TRAFFIC

CHAPTER 1 - GENERAL TRAFFIC PROVISIONS

11-1-1: - ADOPTION OF STATE MOTOR VEHICLE LAWS:

- A. Laws Adopted: The following provisions and sections of Oregon Revised Statutes are hereby incorporated by reference and made a part of this Section as though fully set forth herein, and any violation or failure to comply with such provisions or sections shall be a violation of this Section:

Chapter 481 relating to motor vehicle registration and regulation and licensing of dealers and wreckers;

Chapter 482 relating to operators' and chauffeurs' licenses;

Chapter 483 relating to motor vehicle equipment, size, weight and abandoned vehicles;

Chapter 485 relating to school buses;

Chapter 487 relating to rules of the road; and

649.080 relating to unauthorized display of emblem on motor vehicle.

- B. Amendments: In addition to the provisions and sections of Oregon Revised Statutes incorporated in subsection A above, there are hereby adopted all of the amendments which are now or may hereafter be enacted by the State Legislature of the State of Oregon to any of the Chapters and sections incorporated herein.
- C. Conflicts: In the event that any of the provisions of the Oregon Revised Statutes as incorporated herein shall be inconsistent with any of the specific provisions hereinafter enacted in this Title, the specific provisions of this Title shall prevail, unless otherwise required by State law.

(Ord. No. 67-4, 3-7-67; (Ord. No. 76-4, 9-28-76; amd. 1981 Code)

11-1-2: - DEFINITIONS:

In addition to those definitions contained in the adopted sections of the Motor Vehicle Laws of Oregon, the following words or phrases, except where the context clearly indicates a different meaning, shall mean:

ALLEY: A narrow street through the middle of a block.

BICYCLE: Every device propelled by human power upon which any person may ride, having two or more tandem wheels either of which is over 20 inches in diameter.

BUS STAND: A fixed area in the roadway adjacent to the curb to be occupied exclusively by buses for layover in operating schedules or waiting for passengers.

CURB: The extreme edge of the roadway.

HOLIDAYS: Where used in this Title or on signs erected in accordance with this Title: Sundays, New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and any other legal holidays designated as such by the Statutes of the State of Oregon.

LOADING ZONE: A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or material or freight.

PARK or PARKING: The standing of a vehicle, whether occupied or not, except when a vehicle is temporarily standing for the purpose of and while actually engaged in loading or unloading.

PARKWAY: That portion of a street not used as a roadway or as a sidewalk.

PASSENGER LOADING ZONE: Reserved only for the loading or unloading of passengers and their luggage.

PEDESTRIAN: Any person afoot.

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

STOP: Complete cessation of movement.

TAXICAB STAND: A fixed area in the roadway adjacent to the curb set aside for taxicabs to stand or wait for passengers.

TRAFFIC LANE: That portion of the roadway used for the movement of a single line of vehicles.

11-1-3: - TRAFFIC CONTROL:

11-1-3-1: - POWERS OF CITY COUNCIL:

After approval by the Oregon State Highway Commission, where such approval is required by the Motor Vehicle Laws of Oregon, the Council shall designate by resolution or motion the following traffic controls which shall become effective upon installation of appropriate traffic signs, signals, markings or devices:

A. The parking and standing of vehicles by: ^[1]

1. Classifying portions of streets and alleys upon which either parking or standing, or both, shall be prohibited, or prohibited during certain hours.
2. Establishing the time limit for legal parking in limited parking areas.
3. Designating on each side of a block where required not more than two loading zones.
4. Establishing bus stops, bus stands, taxicab stands and stands for other passenger common-carrier vehicles.
5. Designating the location of passenger loading zones for use in front of the entrance to any hotel, auditorium, theater, church, school or public building.
6. Designating the angle of parking if other than parallel to the curb.
7. Designating City-owned or leased lots or property on which public parking will be permitted.
8. Designating lots or areas within which, or streets or portions of streets along which, parking meters will be installed and the denomination of coins to be used or deposited in parking meters.

B. The operation of vehicles on through streets and one-way streets by:

1. Designating where traffic-control signals shall be placed and the time of operation of such signals.
2. Designating and marking of intersections where drivers of vehicles shall not make right, left or U turns and the times when such prohibitions shall apply.
3. Designating and marking of crosswalks at intersections where deemed necessary for pedestrian safety.
4. Designating and marking safety zones of such kind and character and at such places as deemed necessary for pedestrian safety.

- C. Truck routes.
- D. Streets where trucks, machinery or any other large or heavy vehicles exceeding specified weights shall be prohibited. Such vehicles may, however, be operated on such streets for the purpose of delivering or picking up materials or merchandise, but then only by entering such streets at the intersection nearest the destination of the vehicle and proceeding no farther than the nearest intersection.
- E. Designating streets or portions thereof as one-way streets.

(Ord. No. 67-4, 3-7-67; Ord. No. 75-1, 3-19-75)

11-1-3-2: - EXISTING SIGNS AND SIGNALS:

All official traffic signs and signals existing at the time of the effective date hereof, such as stop signs, caution signs, slow signs, no U turn signs, signs designating time limits for parking or prohibiting parking, lines painted or marked on streets or curbs designating parking areas or spaces, markers designating loading zones, parking meters and all other official traffic signs or signals erected, installed or painted for the purpose of directing, controlling and regulating traffic are hereby approved.

11-1-3-3: - AUTHORITY OF POLICE AND FIRE OFFICERS:

- A. It shall be the duty of the Police Department through its officers to enforce the provisions of this Title.
- B. In the event of a fire or other emergency, officers of the Police Department may direct traffic as conditions may require to expedite traffic or to safeguard pedestrians, notwithstanding the provisions of this Title.
- C. When at the scene of a fire, members of the Fire Department may direct or assist the police in directing traffic. ^[2]

(Ord. No. 67-4, 3-7-67)

11-1-4: - VEHICLE LICENSE FEES:

- A. Local Option Vehicle License Fee Adopted: The City hereby exercises its option to levy an annual tax of \$5.00 on each registered vehicle as provided in House Bill 1979 adopted by the Oregon Legislature in its 1971 Session.

- B. Request to County: The County Court of Grant County is requested under the provisions of Section 12 of House Bill 1979 to forthwith levy the tax provided by subsection A of this Section.

(Ord. No. 71-7, 8-17-71)

11-1-5: - SIGNS AND SIGNALS:

11-1-5-1: - DUTY TO OBEY TRAFFIC SIGNS AND SIGNALS:^[3]

- A. No driver of any vehicle shall disobey the instructions of any traffic sign, signal, marker, barrier or parking meter placed in accordance with the Motor Vehicle Laws of Oregon or this Title, including those erected by any authorized public utility, department of the City or other authorized person, unless it is necessary to avoid conflict with other traffic or when otherwise directed by a police officer.
- B. No unauthorized person shall move, remove, deface, tamper with or alter the position of any such sign, signal, marker, barrier or parking meter.

11-1-5-2: - VEHICLES STOPPING AT STOP SIGNS:

When stop signs are erected at or near the entrance to any intersection, every driver of a vehicle approaching such sign shall come to a full stop before entering any crosswalk or intersection, except when directed to proceed by a police officer or traffic-control signal.

11-1-5-3: - STOP WHEN TRAFFIC OBSTRUCTED:

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the opposite side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

11-1-5-4: - PRIVATE MARKING UNLAWFUL:

It shall be unlawful for any person to letter, mark or paint in any manner any letters, marks or signs on any sidewalk, curb, street or alley, or to post on a parking strip anything designed or intended to prohibit or restrict parking in front of any sidewalk, dwelling house, business house or in any alley, except in compliance with the provisions of this Title.

11-1-6: - PARADES AND PROCESSIONS:

11-1-6-1: - PERMITS REQUIRED FOR PARADES:

No procession or parade, except a funeral procession or military parade, shall occupy, march or proceed along any street except in accordance with a permit issued by the Chief of Police and approved by the Recorder. Such permit may be granted where it is found that such parade is not to be held for any unlawful purpose and will not in any manner tend to a breach of the peace, unreasonably interfere with the peace and quiet of the inhabitants of the City or cause damage to or unreasonably interfere with the public use of the streets.

11-1-6-2: - FUNERAL PROCESSION:

A funeral composed of a procession of vehicles shall be escorted by at least one person authorized to direct traffic for such purposes and shall follow routes established by the Chief of Police. Each vehicle in the procession shall be marked by flags or other designation approved by the Chief of Police.

11-1-6-3: - DRIVERS IN PROCESSION:

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the street as practicable and shall follow the vehicle ahead as closely as is practicable and safe.

11-1-6-4: - DRIVING THROUGH PROCESSION:

No driver of a vehicle other than an authorized emergency vehicle ^[4] shall drive between the vehicles comprising a funeral or other authorized procession while in motion except where traffic is controlled by traffic-control signals or when otherwise directed by a police officer.

11-1-7: - SPEED LIMITS IN PUBLIC PARKS:

No person shall drive a vehicle upon any street in any public park of this City at a speed exceeding 15 miles per hour unless signs are erected to indicate otherwise. ^[5]

11-1-8: - DRINKING IN MOTOR VEHICLES:

It shall be unlawful for any person to consume alcoholic liquor while an occupant of a motor

vehicle on any street or public property in this City. ^[6]

(Ord. No. 67-4, 3-7-67)

11-1-9: - RECKLESS DRIVING:

No person shall drive any vehicle upon a street or public property carelessly and heedlessly in wilful or wanton disregard of the right or safety of others.

(Ord. No. 67-4, 3-7-67; amd. 1981 Code)

11-1-10: - NEGLIGENT DRIVING:

No person shall drive or attempt to drive any vehicle upon a street, public thoroughfare or private property which is open to public travel by means of motor vehicles negligently or carelessly without due regard for the rights or safety of others; in a manner so as to fail to keep a proper lookout; in a manner so as to fail to exercise due and proper care; in a manner so as to cause the vehicle to skid, slide or sway from side to side; in an erratic, unusual or unorthodox manner; or to start or stop a vehicle in a manner that causes it to throw rocks, dirt, mud, gravel or other surface material. ^[7]

11-1-11: - U TURNS:

- A. No person operating a motor vehicle shall make a U turn between intersections, or at intersections where, by authority of the Council, "No U Turn" signs have been posted.
- B. No person shall back a vehicle into an intersection or an alley for the purpose of making a U turn at those places where U turns are prohibited.

11-1-12: - VEHICLES IN MOTION; RIGHT OF WAY:

A vehicle which has stopped or parked at the curb shall yield to moving traffic.

11-1-13: - LIMITATIONS ON BACKING:

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic and shall in every case yield the right of way to moving traffic and pedestrians. ^[8]

11-1-14: - DRIVING ON DIVIDED STREETS:

Whenever any street has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space provided for vehicle movement or at an intersection. ^[9]

11-1-15: - BOARDING OR ALIGHTING FROM VEHICLE:

- A. No person shall open the door of, or enter or emerge from any vehicle in the path of any approaching vehicle.
- B. No person shall board or alight from any vehicle while such vehicle is in motion.

11-1-16: - RIDING ON MOTORCYCLES:

A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is equipped to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if equipped for two persons, or upon another seat firmly attached at the rear of the seat for the operator.

11-1-17: - UNLAWFUL RIDING:

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in space intended for merchandise.

11-1-18: - CLINGING TO VEHICLES:

No person riding upon any bicycle, ^[10] motorcycle, coaster, roller skates, sled or any toy vehicle shall attach the same or himself to any moving vehicle upon the streets.

11-1-19: - USE OF ROLLER SKATES RESTRICTED:

No person upon roller skates or riding in or by means of any coaster, toy vehicle or similar device shall go upon any street except while crossing at a crosswalk or upon a play street.

11-1-20: - SKIS ON STREETS:

No person shall use the streets for traveling on skis, toboggans, sleds or similar devices except upon play streets.

11-1-21: - DAMAGING SIDEWALKS AND CURBS:

- A. The driver of a vehicle shall not drive upon or within any sidewalk or parkway area except to cross at a permanent or temporary driveway, unless otherwise authorized by the Council.
- B. No person shall place any dirt, wood or other material in the gutter or space next to the curb of any street with the intention of using the same as a driveway.
- C. No person shall remove or damage in any way any portion of any curb or move any heavy vehicle or thing over or upon a curb or sidewalk without first notifying the city engineer. Any person who violates the provisions of this section shall be held responsible for any and all damage in addition to any penalties imposed upon conviction.

(Ord. No. 67-4, 3-6-1967)

11-1-22: - OBSTRUCTING STREETS:

No person shall park or leave upon any street including an alley, parking strip, sidewalk or curb any vehicle or any vehicle part, trailer, box, ware, merchandise of any description, or any other thing that in any way impedes traffic or obstructs the view, except as is allowed by this or other ordinances of the city. ^[11]

(Ord. No. 67-4, 3-6-1967)

11-1-23: - REMOVING GLASS AND DEBRIS:

Any party to a collision or other vehicular accident or any person causing broken glass or other debris to be upon any street shall immediately remove or cause to be removed from such street all glass and other foreign substance. ^[12]

(Ord. No. 67-4, 3-6-1967)

11-1-24: - EXCEPTION, EMERGENCY VEHICLE:^[13]

The provisions of this title regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles except as provided by the motor vehicle laws of Oregon and as follows:

- A. A driver when operating such vehicle in an emergency, except when otherwise directed by a police officer or other authorized persons, may park or stand notwithstanding the provisions of this title.
- B. A driver of a police vehicle, fire department vehicle or patrol vehicle when operating such vehicle in an emergency may disregard regulations governing turning in specified directions as long as he does not endanger life or property.
- C. The foregoing exemptions shall not, however, protect the driver of any such vehicle from the consequences of his negligent acts.

(Ord. No. 67-4, 3-6-1967)

11-1-25: - PENALTY:

- A. Any person violating any of the provisions of this title shall, upon conviction thereof, be punished in accordance with the provisions of section 1-4-1 of this code.
- B. In addition, bicycles may be impounded for a period not to exceed ten days.

(Ord. No. 67-4, 3-6-1967; 1981 Code)

11-1-26: - TRAFFIC CITATIONS:^[14]

- A. Illegal Cancellation of Traffic Citations: It shall be unlawful for any person to cancel or solicit the cancellation of any traffic citation without the approval of the municipal judge. ^[15]
- B. Citation: For the violation of any provisions of this title, any police officer may issue a citation which shall be in the nature of a notice to appear at a time and place certain as required by law. ^[16] If any person fails to comply with the terms of a citation within the time set by the issuing officer from the date of issuance, the chief of police may send to such person or the owner of the motor vehicle a letter informing such person or owner of the violation with a warning that in the event such letter is disregarded for a period of ten days, a warrant of arrest will be issued.

- C. When Warrant Issued: In the event any person fails to comply with the terms of a traffic citation, the chief of police shall forthwith secure and have served a warrant for the arrest of such person.

(Ord. No. 67-4, 3-6-1967)

CHAPTER 2 - STOPPING, STANDING OR PARKING

11-2-1: - METHOD OF PARKING:^[17]

- A. No person shall stand or park a vehicle in a street other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement, and with the curbside wheels of the vehicle within 12 inches of the edge of the curb, except where the street is marked or signed for angle parking.
- B. Where parking space markings are placed on a street, no person shall stand or park a vehicle other than at the indicated direction and within a single marked space, unless the size or shape of such vehicle makes compliance impossible.
- C. Whenever the owner or driver of a vehicle discovers that such vehicle is parked immediately in front of or close to a building to which the Fire Department has been summoned, he shall immediately remove such vehicle from the area unless otherwise directed by police or fire officers.

(Ord. No. 67-4, 3-6-1967)

11-2-2: - PROHIBITED PARKING:

In addition to provisions of the Motor Vehicle Laws of Oregon prohibiting parking ^[18], no person shall park a vehicle:

- A. Upon any bridge, viaduct or other elevated structure used as a street or within a street tunnel in the City, unless marked or indicated otherwise.
- B. In any alley except to load or unload persons or materials not to exceed two hours.
- C. Upon any street for the principal purpose of:
 - 1. Displaying such vehicle for sale.
 - 2. Washing, greasing or repairing such vehicle except repairs

necessitated by an emergency.

3. Selling merchandise from such vehicle except in a duly established market place or when so authorized or licensed under the ordinances of this City.
 4. Storage, or as junkage or dead storage for more than 15 hours.
 5. No boat, trailer, travel trailer or motor home shall be parked upon any street, alley, or parking strip (area between curb and property line) for more than five days except in the event of an emergency.
 - a. In the event of an emergency it shall be located in a location which will minimize hazard to vehicular and pedestrian traffic, after first receiving approval from the City Manager or in his absence the Chief of Police.
 - b. The casual movement of any boat, trailer, travel trailer, or motor home shall not reactivate the five day provision.
- D. Upon any parkway except where specifically authorized.
- E. Upon private property without the consent of the owners or persons in charge of such private property.

(Ord. No. 67-4, 3-6-1967; Ord. No. 96-89-1, 1-23-1996)

11-2-3: - LOADING ZONES:

- A. Use of Loading Zones: No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials, freight or passengers in any place designated as a loading zone during the hours when the provisions applicable to loading zones are in effect. In no case shall the stop for loading and unloading of passengers and personal baggage exceed five minutes, nor the loading or unloading of materials exceed 15 minutes.
- B. Use of Passenger Loading Zone: No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious loading or unloading of passengers in any place designated as a passenger loading zone during the hours when the provisions applicable to passenger loading zones are in effect.

(Ord. No. 67-4, 3-6-1967)

11-2-4: - BUSES AND TAXICABS:

The driver of a bus or taxicab shall not stand or park such vehicle upon any street in any business district at any place other than at a bus stand or taxicab stand, respectively, except that this provision shall not prevent the driver of any taxicab from temporarily stopping for the purpose of and while actually engaged in the loading or unloading of passengers.

(Ord. No. 67-4, 3-6-1967)

11-2-5: - RESTRICTED USE OF BUS AND TAXICAB STANDS:

No person shall stop, stand or park a vehicle other than a bus in a bus stand or other than a taxicab in a taxicab stand, except that the driver of a passenger vehicle may temporarily stop for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

(Ord. No. 67-4, 3-6-1967)

11-2-6: - MOVING VEHICLE:

The moving of any vehicle within a block shall not be deemed to extend the permissible time for parking it there.

(Ord. No. 67-4, 3-6-1967)

11-2-7: - LIGHTS ON PARKED VEHICLE:^[19]

No lights need be displayed upon any vehicle parked in accordance with this Title or parked upon a street where there is sufficient light to reveal any person or object within a distance of 50 feet upon such street.

(Ord. No. 67-4, 3-6-1967)

11-2-8: - EXEMPTION:

The provisions of this Chapter regulating the parking or standing of vehicles shall not apply to any vehicle of a City department or public utility necessarily in use for construction or repair work, or to any vehicle owned by the United States while in use for the collection, transportation or delivery of United States mail.

(Ord. No. 67-4, 3-6-1967)

11-2-9: - IMPOUNDING VEHICLES:^[20]

- A. Impounding of Vehicle: In the event any vehicle is found standing or parked in violation of any City regulation, such vehicle shall be given a traffic citation ^[21] and may be removed by any police officer and taken to a garage, parking lot or other suitable place and there kept until an application for its redemption is made by the owner or his authorized agent.
- B. Redemption: Redemption may be made upon payment of towing and storage charges, which amounts shall be in addition to any fine imposed in accordance with the provisions of this Title.
- C. Sale: If the vehicle shall not be redeemed within 30 days, then it shall be sold in accordance with the applicable provisions relating to the sale of abandoned vehicles. ^[22]

(Ord. No. 67-4, 3-6-1967)

CHAPTER 3 - PEDESTRIANS

11-3-1: - USE OF SIDEWALKS:

Pedestrians shall not use any roadway for travel when sidewalks abutting the same are available. ^[23]

(Ord. No. 67-4, 3-7-1967)

11-3-2: - CROSSING AT RIGHT ANGLES:

No pedestrian shall cross a street at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk. ^[24]

(Ord. No. 67-4, 3-7-1967)

11-3-3: - USE OF CROSSWALKS:

In blocks with marked crosswalks no pedestrian shall cross a street other than within a crosswalk. ^[25]

(Ord. No. 67-4, 3-7-1967)

CHAPTER 5 - ABANDONED, WRECKED VEHICLES

11-5-1: - DEFINITIONS:

As used in this Chapter, unless the context requires otherwise:

ABANDONED: Left unoccupied and unclaimed or in a damaged or dismantled condition upon the streets or alleys of the City.

CITY: The City of John Day.

COSTS: The expense of removing, storing or selling an impounded vehicle.

CHIEF OF POLICE: Includes any authorized law enforcement officer of the City.

OWNER: Any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or any interest, legal or equitable, in a vehicle.

VEHICLE: Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

PRIVATE GARAGE: A reputable, private storage yard, garage or other storage place selected by the Council of the City.

11-5-2: - POLICE DUTIES:^[27]

- A. It shall be the duty of the Police Department, whenever a vehicle is found abandoned upon the streets or alleys in the same period for a period of two days, to:
 - 1. Make a routine investigation to discover the owner and request removal of the vehicle, and
 - 2. If the owner is not found, to place a notice upon the windshield, or some other part of the vehicle easily seen by the passing public.
- B. Such notice shall state that the Police Department will remove and impound the vehicle under the provisions of this Chapter within 24 hours of the day of the posting, unless: ^[28]

1. The owner removes the vehicle, or
2. Good cause is shown, satisfactory to the Chief of Police, why such vehicle should not be removed by the owner or removed and impounded by the City.

11-5-3: - DECLARATION OF NUISANCE:

- A. An abandoned vehicle which remains in the same position for a period of 24 hours after a notice to remove has been posted upon such vehicle, and no person has appeared to show good cause why such vehicle should not be moved, shall constitute a nuisance.
- B. A vehicle abandoned in such a location and/or condition that it is or could be a detriment to the general safety, health and welfare of the city or its inhabitants therein shall constitute a nuisance.
- C. It shall be the duty of the police department to remove any vehicle which shall constitute a nuisance, under the provisions of this chapter, and store such vehicle in a private garage or upon city property, pending investigation into the ownership of such vehicle.

(Ord. No. 68-7, 1-23-1968)

11-5-4: - IMPOUNDMENT OF VEHICLES:

- A. Determine Ownership: The police department, after impounding any vehicle in accordance with the provisions of this chapter, shall:
 1. Make a diligent inquiry as to the name and address of the owner of the vehicle.
 2. Examine such vehicle for license number, motor number, serial number, make, style and any other information which will aid in the identification of the ownership of the vehicle, and
 3. Thereafter, immediately transmit all available information pertaining to such vehicle to the department of motor vehicles of Oregon, with an inquiry for the name and address of the owner, whenever such vehicle is required to be registered with the office of the department of motor vehicles of the state of Oregon.
- B.

Notify Owner: If the owner is identified, he shall be notified immediately by registered mail that such vehicle is held by the police department of the city. The notice to the owner shall also state:

1. The reason for impounding the vehicle.
2. The existing costs charged against the vehicle.
3. An estimate of future costs, including the cost of advertising the vehicle for sale, and
4. Unless the owner redeems the vehicle within ten days from the date of mailing said notice if the address of the owner is within the state of Oregon, or within 20 days of the date of mailing said notice if the address of the owner is without the state of Oregon, and pays all the costs, the vehicle:
 - a. Will be advertised for sale, in accordance with section 11-5-6 of this chapter; and
 - b. Will be sold at public auction, at a definite time and place within the city to the highest and best bidder for cash.

(Ord. No. 68-7, 1-23-1968)

11-5-5: - REDEMPTION OF VEHICLE:

- A. An owner may redeem a vehicle impounded under the provisions of this chapter, before a sale has taken place, by applying to the police department, whereupon he shall:
 1. Submit evidence of his ownership or interest in the vehicle, satisfactory to the chief of police, that such claim is rightful, and
 2. Pay the costs due and owing at the time the application to redeem is made.
- B. Upon compliance with subsection A of this section, the chief of police shall execute a receipt for the owner and cause the vehicle to be returned to him.

(Ord. No. 68-7, 1-23-1968)

11-5-6: - SALE OF UNCLAIMED VEHICLES:

- A. Notice of Sale:
 - 1.

If the owner cannot be identified after compliance with subsection 11-5-4A of this chapter, or no claim is made by a notified owner within the time specified by subsection 11-5-4B4 of this chapter, the chief of police shall cause to be published in the Blue Mountain Eagle a notice of sale and that he shall also cause said notice to be posted in the city hall in John Day. The notice of sale shall state:

- a. The sale is of abandoned property in possession of the City.
 - b. A description of the vehicle, including the type, make, motor number, serial number and any other information which will aid in accurately identifying the vehicle.
 - c. The terms of the sale.
 - d. The date, time and place of the sale.
2. The notice of sale shall be published two times, the first publication shall be made not less than 13 days prior to the date of the proposed sale, and the second shall be made not less than six days prior to the date of the proposed sale, and at least 13 days prior to said sale, there shall be posted a notice of said sale at the City Hall in John Day.

B. Sale of Vehicles:

1. If no claim shall have been made to redeem an impounded vehicle before the time set for the sale of such vehicle, the Chief of Police shall hold a sale at the time and place appointed within the view of the vehicle to be sold.
2. The vehicle shall be sold to the highest and best bidder; providing, that if no bids are entered, or those bids which are entered are less than the costs incurred by the City, the Chief of Police can enter a bid on behalf of the City in an amount equal to such costs, if he feels it would be to the benefit of the City, otherwise the vehicle will be sold to the highest and best bidder, even though his bid may be less than the costs incurred by the City.

The proceeds of such sale shall be applied:

- a. To the payment of the costs incurred by the City, and
- b. Then for such services as may be rendered by a private garage, and
- c. The balance, if any, shall be transferred to the City Treasurer to be

credited to the General Fund.

C. Certificate of Sale:

1. At the time of the payment of the purchase price, the Chief of Police shall execute a certificate of sale in duplicate, the original of which shall be delivered to the purchaser, and the copy thereof filed with the City Recorder.
2. The certificate of sale shall be substantially as follows:

CERTIFICATE OF SALE

This is to certify that under the provisions of City Code Title 11, Chapter 5 entitled "Abandoned, Wrecked Vehicles" and pursuant to due notice of the time and place of sale, I did on the _____ day of _____, 19_____, sell at public auction to _____ for the sum of \$ _____ cash, he being the highest and best bidder, and that being the highest and best sum bid therefor, the following described personal property, to-wit:

(brief description of the property)

And in consideration of the payment of said sum of \$ _____, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property.

Dated this _____ day of _____, 19_____.

Note: The City of John Day assumes no responsibility as to the condition of title of the above described property. In case this sale shall for any reason be invalid, the liability of the City is limited to the return of the purchase price.

11-5-7: - APPLICABILITY OF PROVISIONS:

This Chapter shall apply to all abandoned vehicles now in the possession of the City as well as to all such vehicles as may hereafter be impounded.

11-5-8: - CHARGES SET BY RESOLUTION:

In the enforcement and execution of the provisions of this Chapter, the Chief of Police shall

charge and collect such charges as the City sets by resolution or motion.

11-5-9: - USE OF PRIVATE GARAGE BY CITY:

Where the Council selects a private garage, the City shall pay such fees as set by the garage which are reasonable for services rendered by the garage and shall be liable to the garage for the payment of towing and storage fees charged by the garage. The vehicle shall not be released from the private garage except upon a receipt, signed by the Chief of Police, proffered by the purchaser.

11-5-10: - DAMAGED, DISMANTLED VEHICLES:

Notwithstanding any other sections to the contrary, this Chapter shall also apply to any vehicles left unoccupied and unclaimed or in a damaged or dismantled condition upon private property within the City upon written request to the City by the person entitled to possession of the property to remove the vehicles left on private property for the purpose of storage of repairs with the permission of the property owner.

(Ord. No. 68-7, 1-23-68)

CHAPTER 6 - ALL-TERRAIN VEHICLES

11-6-1: - SHORT TITLE:

This chapter may be referred to and cited as the ATV ORDINANCE.

(Ord. No. 13-156-01, 3-12-2013)

11-6-2: - DEFINITIONS:

As used in this chapter, the following capitalized terms have the meanings assigned to them below:

ATV OPERATOR PERMIT: Has the meaning given that term under OAR 736-004-0015(10). OAR 736-004-0015(10) defines an "ATV operator permit" as the ATV safety education card issued upon completion of an Oregon parks and recreation department approved ATV safety education course and passage of the minimum standards test of ATV safety education competency as established by the Oregon parks and recreation department.

ALL-TERRAIN VEHICLE(S) AND ATV(S): Class I all-terrain vehicles, class II all-terrain vehicles, and/or class IV all-terrain vehicles.

CLASS I ALL-TERRAIN VEHICLE(S): Has the meaning given that term under ORS 801.190. ORS 801.190 defines a "class I all-terrain vehicle" as a motorized, off highway recreational vehicle that: a) is 50 inches or less in width, b) has a dry weight of 1,200 pounds or less, c) travels on three or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less, d) uses handlebars for steering, e) has a seat designed to be straddled for the operator, and f) is designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain. Class I all-terrain vehicles may also be known as quads, three-wheelers, or four-wheelers.

CLASS II ALL-TERRAIN VEHICLE(S): Any motor vehicle that: a) weighs more than or is wider than a class I all-terrain vehicle, b) is designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, c) is not a class IV all-terrain vehicle, and d) is street legal, is registered under ORS 803.420, and has a roof or roll bar. Class II all-terrain vehicles may also be known as four-by-fours, pickups, jeeps, sand rails, dune buggies, and SUVs.

CLASS IV ALL-TERRAIN VEHICLE(S): Has the meaning given that term under ORS 801.194(2). ORS 801.194(2) defines a class IV all-terrain vehicle as any motorized vehicle that: a) travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less, b) is designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, c) has nonstraddle seating, d) has a steering wheel for steering control, e) has a dry weight of 1,800 pounds or less, and f) is 65 inches wide or less at its widest point. Class IV all-terrain vehicles may also be known as side-by-sides.

DRIVER'S LICENSE: Has the meaning given that term under ORS 801.245.

MOTORCYCLE HELMET: Has the meaning given that term under ORS 801.366. ORS 801.366 defines a "motorcycle helmet" as a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell and a chinstrap type retention system with a sticker indicating that the motorcycle helmet meets standards established by the United States department of transportation.

STREET(S): All highways, roads, streets, and alleys, other than state of Oregon highways and two lane gravel roads, within the boundaries of the city that are open, used, or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

TRAFFIC LAW(S): Any and all Oregon statutes and regulations relating in any way to the operation or use of motorized vehicles, including, without limitation, the Oregon vehicle code ^[29] and any regulations promulgated thereunder.

(Ord. No. 13-156-01, 3-12-2013)

11-6-3: - OPERATION OF ALL-TERRAIN VEHICLES ON STREETS AUTHORIZED:

Subject to the provisions of this chapter, ATVs may be operated on streets subject to the conditions and restrictions set forth under ORS 821.200. All-terrain vehicles are prohibited from operating under this chapter on any state of Oregon highway within the boundaries of the city, including, without limitation, South Canyon Boulevard/U.S. Highway 395 and Main Street/U.S. Highway 26, except that a person may, while operating an ATV, cross a state of Oregon highway to the extent permitted under applicable Oregon law, including, without limitation, ORS 821.200(1).

(Ord. No. 13-156-01, 3-12-2013)

11-6-4: - REGULATIONS FOR OPERATION OF ALL-TERRAIN VEHICLES:

All-terrain vehicles operated under this chapter must be operated in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, all applicable traffic law requirements (including, without limitation, ORS 811.255) and all posted speed limits, and in a manner comporting with the public health, safety, and general welfare.

- A. Licensed Driver 18 Years of Age or Older Required: A person operating an ATV under this chapter must be 18 years of age or older and hold a valid driver's license.
- B.

All-Terrain Vehicle Operator Permit Required: A person operating a class I all-terrain vehicle under this chapter must hold a valid class I ATV operator permit issued under ORS 390.570. A person operating a class IV all-terrain vehicle under this chapter must hold a valid class IV ATV operator permit issued under ORS 390.577.

- C. Safety Equipment Requirements: All-terrain vehicles operated under this chapter must be equipped with the safety equipment required under all applicable traffic laws, including, without limitation, ORS 821.030, 821.040, 821.220, 821.230, and OAR 735-116-0000.
- D. Helmet Requirements: A person who is under 18 years of age must wear a motorcycle helmet with a fastened chinstrap while riding as a passenger on an ATV operated under this chapter.
- E. Safety Belt Requirements: A person must be properly secured with a safety belt or safety harness while operating or riding as a passenger on an ATV operated under this chapter if such ATV was required to be equipped with safety belts or safety harnesses at the time the ATV was manufactured or safety belts or safety harnesses have been installed on the ATV.
- F. Speed Limits: All-terrain vehicles operated under this chapter must be operated in compliance with all posted speed limits and may not be operated: 1) at a rate of speed greater than reasonable and proper under the existing conditions, or 2) in a negligent manner so as to endanger or cause injury, death, and/or damage to the operator or person or property of another.
- G. Prohibition on Operating All-Terrain Vehicles While Driving Privileges Suspended: A person may not operate an ATV under this chapter while the person's driving privileges (i.e., driver's license) are suspended or revoked.
- H. Financial Requirements: All-terrain vehicles operated under this chapter must meet the financial responsibility requirements under ORS 806.060. For purposes of this subsection, "financial responsibility requirements" means the ability to respond in damages for liability, on account of accidents arising out of the ownership, operation, maintenance, and/or use of an ATV, in a manner provided under ORS 806.060.
- I.

Daylight Hours Only: All-terrain vehicles operated under this chapter may be operated only during daylight hours. For purposes of this subsection, "daylight hours" means one-half-hour before sunrise to one-half-hour after sunset. At any time from one-half-hour before sunrise to one-half-hour after sunrise and from one-half-hour before sunset to one-half-hour after sunset, and during any time when limited visibility conditions exist, ATVs operated under this chapter must be equipped with and display headlights and taillights.

(Ord. No. 13-156-01, 3-12-2013)

11-6-5: - POSTING:

The city will post signs giving notice that the operation of ATVs is permitted upon streets under the provisions of this chapter. The city will post such signs at locations necessary to inform the public that ATVs are permitted upon streets, which sign locations will be determined by the city in its sole discretion.

(Ord. No. 13-156-01, 3-12-2013)

11-6-6: - LIABILITY:

The operation of an ATV will be undertaken at the sole risk and responsibility of the owner and/or operator. The city, by passing the ordinance codified herein, assumes no responsibility for the operation of such ATVs and will be held harmless in any action arising from the operation of such ATVs on or off any public way within the city, including, without limitation, streets.

(Ord. No. 13-156-01, 3-12-2013)

11-6-7: - PENALTIES:

Violation of, or failure to comply with, any provision of this chapter, including, without limitation, the operation of an ATV where such ATV is prohibited, is punishable by a fine not to exceed \$500.00. Each violation of this chapter will constitute a separate offense. The penalties imposed by this section are not exclusive and are in addition to any other remedies, civil or criminal, available to the city under applicable law.

(Ord. No. 13-156-01, 3-12-2013)

APPENDIX

APPENDIX A - PUBLIC WAYS

Ord. No.	Date of Enactment	Location
VACATIONS		
78	6-11-1913	Portion of "Extension of Canyon Street"
140	4-12-1955	Portion of Hunt Street
67-8	8-8-1967	Strip of land adjoining south property line of the Anchor Club Lot, also known as Hillcrest Drive
88-57-4	9-20-1988	Portion of alley acquired from Earl H. Brent
92-70-3	8-11-1992	Portion of Hunt Street
92-71-4	8-11-1992	Portion of S.W. Brent Drive
DEDICATIONS		
172	9-18-1944	Portion of lot 4, block A
173	9-18-1944	Portion of block G
174	9-18-1944	Portion of block G
ESTABLISHMENTS AND EXTENSIONS		
31	3-31-1902	Main Street

32	4-15-1902	Bridge Street
47	1-20-1906	N. First Street
48	1-20-1906	Canyon Street
49	1-20-1906	Church Street
68-2	1-9-1968	City street in <u>section 23</u> , T. 13S., R. 31E., W.M.
ACCEPTANCE OF JURISDICTION		
96-90-2	5-14-1996	N.W. Valley View Drive (County Road 50)
11-148-01	4-26-2011	County Road 80 (Aviation Road), County Road 80-A (Industrial Park Road), County Road 80-C (North Industrial Lane) and County Road 80-D (West Industrial Road)

APPENDIX B - LOCAL IMPROVEMENTS

Ord. No.	Date of Enactment	Location
STREETS		
37	12-12-1902	Portion of Bridge Street
41	5-10-1903	First Street
42	5-1-1903	First Street

50	2-19-1906	N. First Street
51	2-19-1906	Canyon Street
52	2-19-1906	Church Street
SIDEWALKS		
114	7-14-1926	Main Street between Canyon Street and Church Street
92-69-2	7-14-1992	N.W. Canton Street
92-72-5	9-8-1992	W. John Day
93-74-2	8-10-1993	Hillcrest Road
94-78-4	6-28-1994	Portions of West Main Street and South Canyon Boulevard
97-94-2	11-11-1997	Portions from SE Hillcrest Road to Third Street and portions of South Canyon Boulevard
05-113-1	2-8-2005	Portions of North Canyon Boulevard
07-125-1	1-23-2007	Portions of South East Dayton Street

08-134-7	11-25-2008	Portions abutting the west side of South Canyon Boulevard, the west side of NW Bridge Street between the former John Day Junior High School and NW Third Avenue, and the south side of NW Second Avenue and the north side of NW Second Avenue to Boyce Place between NW Bridge Street and North Canyon Boulevard, and the east side of NW Bridge Street between NW Second Avenue to NW Seventh Street
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APPENDIX C - TAX LEVIES

Ord. No.	Date of Enactment	Year
57	12-09-08	—
69	12-14-09	—
71	12-14-10	—
76	12-12-11	—
77	12-23-12	—
81	11-12-13	—
83	11-18-13	—
84	11-10-14	—
87	11-20-15	1916

88	11-20-15	1916
90	11-20-16	1916
95	11-15-17	1917
97	11-12-18	1918
Unnumbered	—	—
90-62-2	06-26-90	1990
90-63-3	06-26-90	1990

APPENDIX D - FRANCHISES

Ord. No.	Date of Enactment	Party	Purpose	Time
<u>22</u>	2-26-1901	Clarence Johnson	Gas lighting	20 years
30	3-11-1902	H.M. Basford	Water system	30 years
44	1-23-1904	Frank Hacheney	Water system	20 years
45	3-14-1904	Frank Hacheney	Water system	5 years
64	6-23-1909	F.E. Foster and M. Dexter	Irrigation system	20 years

115	2-18-1927	Forest service, USDA	Right of way for telephone line construction	20 years
129	6-14-1929	Peoples West Coast Hydro- Electric Corporation	Electricity	25 years
160	11-9-1937	Pacific Telephone and Telegraph Company	Telephone	20 years
251	6-13-1950	California-Pacific Utilities Company	Electricity	20 years
300	1-23-1954	Haskell Scott and Kenneth Scott	Television	10 years
285	10-17-1957	Pacific Telephone and Telegraph Company	Telephone	10 years
64-1	5-12-1964	Howard Peelman d.b.a. Valley Taxi Company	Taxicab	1 year
67-10	10-3-1967	Pacific Northwest Bell Telephone Company	Telephone	20 years

68-9	3-19-1968	Pacific Northwest Bell Telephone Company	Telephone	20 years
91-65-2	3-26-1991	Blue Mountain TV Cable Co.	CATV	10 years
98-96-2	10-13-1998	CenturyTel	Telephone	10 years
01-100-1	5-8-2001	Blue Mountain TV Cable Co.	CATV	10 years
03-105-1	4-9-2003	High Desert Net, Inc.	Wireless internet	1 year
09-139-05	7-28-2009	CenturyTel	Telecommu- ication	10 years
10-143-03	10-12-2010	Oregon Trail Electric Consumers Cooperative, Inc.	Electricity	10 years
12-152-02	2-14-2012	M.D. Communications, LLC	Broadband internet service	10 years
12-154-04	3-13-2012	Blue Mountain TV Cable Co.	CATV	10 years

Ord. No.	Date of Enactment	Location
CHARTER AMENDMENTS		
92	3-16-17	Charter amendments
Unnumbered	5-2-22	Charter amendments
200	3-25-47	Charter amendment — Section 100
215	5-12-57	Charter amendment — Section 102
220	5-24-49	Charter amendment — Section 101
250	5-23-50	Charter amendment — Section 105
TAX LEVIES		
Unnumbered	10-2-23	Tax levy
221	5-24-49	Tax levy limitation
BOND ISSUES		
156	7-3-37	Water
ANNEXATIONS		
161	7-13-48	Annexation

Ord. No.	Date of Enactment	Amount	Purpose
93	6-12-47	\$ 7,500.00	Water
Unnumbered	6-8-20	8,000.00	Water
Unnumbered	5-24-22	7,000.00	Water
157	9-14-37	25,000.00	Water
210	10-5-48	100,000.00	Sewer system
216	—	—	—
76-2	4-13-76	475,000.00	Sewer system

APPENDIX G - ANNEXATIONS

Ord. No.	Date of Enactment	Location
148	1-10-1956	Metes and bounds description
65-A	7-19-1965	Hearing
65-B	8-10-1965	Metes and bounds description
67-12	12-12-1967	Hearing
68-1	1-9-1968	Tract of land in the SE¼ NW¼, S. <u>23</u> , T. 13 S., R. 31 E., W.M.

94-80-6	7-26-1994	Metes and bounds description
95-82-2	4-25-1995	Metes and bounds description
95-85-3	5-9-1995	Metes and bounds description
95-86-6	9-26-1995	Metes and bounds description
96-92-4	11-12-1996	Parcel of land lying in the SE¼ SW¼ of <u>Section 22</u> , Township 13 South, Range 31 East, W.M.
05-114-2	2-8-2005	Real property located in T13S, R31E, W.M.
05-115-3	2-22-2005	Amending ordinance 05-114-2
05-116-4	4-26-2005	Amending ordinance 05-114-2
05-119-7	7-12-2005	Amending ordinances 05-114-2, 05-115-3 and 05-116-4
10-144-04	9-14-2010	Real property located in T13S, R31E, W.M.
10-145-05	9-14-2010	Amending ordinance 10-144-04

APPENDIX H - REPEALERS

Ord. No.	Date of Enactment	Location
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68-4	1-16-1968	Ordinances 2, 3, 4, 5, 10, 11, 12, 13, <u>16, 17</u> , 20, <u>23</u> , 24, 25, 26, 28, <u>33, 36, 39</u> , 54, 55, 58, 59, 60, 62, 70, 73, 74, 85, 91, 94, 96, unnumbered (enacted December 28, 1922), 108, 109, 110, 113, 116, 117, 119, 121, 125, 128, 130, 135, 137, 143, 144, 145, 151, 152, 154, 155, 158, 161 (enacted January 11, 1938), 163, 164, 166, 167, 169, 170, 171, 225 (enacted in 1949), 207, 261, 272, 305, 275, 58-1, 59-1 and 64-2
68-6	1-23-1968	Ordinances <u>27, 29</u> , 67, 68, 112 and 136
68-10	3-20-1968	Ordinances 136a, 142, 146, 149, 153, 165, 203, 208, 218, 260 and 62-1
03-108-4	6-10-2003	Ordinance 03-105-1

APPENDIX I - MISCELLANEOUS

Ord. No.	Date of Enactment	Location
79	6-11-1913	Providing for making survey of city
82	11-14-1913	Adopting survey of city
150	10-12-1935	Refunding \$19,000.00 bonded indebtedness
159	10-13-1937	Purchase of firefighting equipment

67-9	9-20-1967	Obstructions and construction within 60 feet of the Chinese Museum building
67-11	10-17-1967	Withdrawal of certain areas from John Day rural fire protection district
88-56-3	6-29-1988	State revenues for fiscal year 1988-1989
89-59-6	5-23-1989	Loan agreement for purpose of construction of city hall
89-60-7	6-27-1989	State revenues for fiscal year 1989-1990
91-64-1	3-12-1991	Withdrawal of certain territory from the city
91-66-3	5-14-1991	State revenues for fiscal year 1991-1992
92-68-1	6-9-1992	State revenues for fiscal year 1992-1993
93-73-1	6-22-1993	State revenues for fiscal year 1993-1994
94-77-3	5-10-1994	State revenues for fiscal year 1994-1995
95-84-4	6-27-1995	State revenues for fiscal year 1995-1996
96-91-3	6-11-1996	State revenues for fiscal year 1996-1997
97-93-1	5-13-1997	State revenues for fiscal year 1997-1998
98-95-1	4-28-1998	State revenues for fiscal year 1998-1999
99-97-1	4-13-1999	State revenues for fiscal year 1999-2000
99-98-2	6-22-1999	Transportation system plan adopted

00-99-1	5-23-2000	State revenues for fiscal year 2000-2001
01-101-2	5-22-2001	State revenues for fiscal year 2001-2002
01-102-3	10-30-2001	Authorizing a loan from the special public works fund
02-103-4	1-2-2002	Authorizing a loan from the special public works fund
02-104-5	5-14-2002	State revenues for fiscal year 2002-2003
03-106-2	5-27-2003	State revenues for fiscal year 2003-2004
03-110-6	8-26-2003	Authorizing a loan from the special public works fund
04-111-1	5-25-2004	State revenues for fiscal year 2004-2005
05-117-5	5-24-2005	State revenues for fiscal year 2005-2006
05-120-8	10-25-2005	Amending comprehensive plan zoning map
05-121-9	11-22-2005	Intergovernmental agreement for road work repairs
06-123-2	5-23-2006	State revenues for fiscal year 2006-2007
07-127-3	5-22-2007	State revenues for fiscal year 2007-2008
08-131-4	5-27-2008	State revenues for fiscal year 2008-2009
09-136-02	6-9-2009	Updating and amending comprehensive plan, development code and zoning map

09-137-03	6-9-2009	Adopting local street network plan and amending comprehensive plan and development code
09-138-04	6-9-2009	State revenues for fiscal year 2009-2010
10-142-02	5-25-2010	State revenues for fiscal year 2010-2011
10-146-06	11-9-2010	Adopting text amendments to land use and development code
10-147-07	11-23-2010	Adopting amendments to city of John Day - Grant County urban growth management agreement
11-150-03	5-24-2011	State revenues for fiscal year 2011-2012
12-151-01	1-10-2012	Adopting text amendments to land use and development code
12-155-05	5-8-2012	State revenues for fiscal year 2012-2013
13-159-04	5-28-2013	State revenues for fiscal year 2013-2014
14-160-01	2-25-2014	Assessment for demolition costs of dangerous building
14-161-02	4-22-2014	Moratorium on medical marijuana facilities