

Chapter 6

ENVIRONMENT AND HEALTH

Nuisances

6.005 **Definitions.** For purposes of sections 6.005 to 6.845, the following words and phrases mean:

Developed property. A tract of land occupied preponderantly by a structure used or designed for use as a residence or a place of economic enterprise, by landscaping, by other improvement accessory to the structure, or by a combination of such land development.

Enforcing officer. Any city employee authorized by the city manager to enforce the nuisance abatement provisions of this chapter.

Graffiti. Any inscriptions, words, figures or designs, other than handbills, that are marked, etched, scratched, drawn, painted, pasted, or otherwise affixed to the exterior surface of public or private property, without the knowledge and prior consent of the owner or person in charge of the property.

Person in charge of property. An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or the supervision of a construction project on the property.

Person responsible. Any or all of the following:

- (a) The owner of the property on which the nuisance exists or the owner of property which abuts a public way where a nuisance exists.
- (b) The person in charge of the property or of property which abuts a public way where a nuisance exists.
- (c) The person who causes the nuisance to come into or continue in existence.

Public way. Any street, road, alley, right-of-way, pedestrian or bicycle easement for public use.

Rodent-proof. Any building, structure or part thereof is "rodent-proof" when it is constructed of concrete, metal or some equally impermeable material and in a manner that excludes rats and mice therefrom.

Vegetation. Plant life, including but not limited to, trees, shrubs, flowers, weeds and grass.

(Section 6.005 amended by Ordinance No. 18199, enacted May 31, 1978; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; administratively amended by

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Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 20165, enacted August 11, 1999, effective September 10, 1999.)

6.007 Nuisances - Prohibition and Responsibility to Abate.

- (1) No person responsible shall cause or permit a nuisance on public or private property.
- (2) The person responsible shall be liable for injury, damage or loss to person or property caused by the negligent failure to abate any nuisance described in this code.
- (3) The city shall not be liable for injury, damage or loss to any person or property caused in whole or in part by the failure of the person responsible to comply with subsection (1) of this section, or by the failure of the city as a person responsible to abate a nuisance.
- (4) Neither the duty of the person responsible to keep property free of nuisances nor his/her failure to do so is dependent upon notice from the city to abate the nuisance.
- (5) The person responsible shall defend and hold harmless the city from all claims for loss or damage arising from the failure to comply with subsection (1) of this section.

(Section 6.007 added by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

6.010 Nuisances Affecting the Public. The following are nuisances which may be abated as provided in this code:

- (a) Animal carcasses, etc. The deposition of an animal carcass or part thereof, or any excrement or sewage, or industrial waste, or any putrid, nauseous, decaying, deleterious, offensive, or dangerous substance in 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.
- (b) Attractive nuisances. No owner or person in charge of property shall permit thereon:
 1. Unguarded machinery, equipment, or other devices which are attractive, dangerous, and accessible to children.
 2. Lumber, logs, or pilings placed or stored in a manner so as to be attractive, dangerous, and accessible to children.
 3. An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent such places from being used by children.
 4. An open, vacant structure which is attractive, dangerous and accessible to children or which is used for habitation by trespassers.

This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

- (c) Debris. An accumulation of decomposed animal or vegetable matter, garbage, rubbish, manure, offal, ashes, discarded containers, waste,

paper, debris, trash, hay, grass, straw, weeds, litter, rags, or other refuse matter or substance which by itself in conjunction with other substances is deleterious to public health or comfort, or is unsightly, or creates an offensive odor.

- (d)** Fences.

 - 1. A fence, barrier, partition or obstruction electrically charged or connected with any electric source in such a manner as to transmit an electrical shock or charge to any person, animal or thing which might come in contact therewith.
 - 2. A barbed-wire fence along a sidewalk or public way except barbed-wire placed on top of fences to prevent access to enclosed hazardous areas or facilities, or barbed-wire on fences in an AG Agricultural District.
- (e)** Iceboxes and other containers. 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. This definition does not include iceboxes, refrigerators, or other containers offered for sale by commercial establishments provided that the same are kept within enclosures from which children are excluded at all times except business hours.
- (f)** Odors. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition.
- (g)** Privies, etc. A privy, vault, cesspool, septic tank or drain which emits a noisome and offensive smell, or which is prejudicial to public health.
- (h)** Stagnant water. An accumulation of stagnant or impure water which affords or might afford a breeding place for mosquitoes or other insects.
- (i)** Vegetation. Any vegetation on public or private property that:

 - 1. Is a hazard to pedestrian or vehicular use of a sidewalk or street by obstructing passage or vision. The hazards include but are not limited to:
 - (a) Vegetation that encroaches upon or overhangs a pedestrian way or adjacent curb strip lower than nine feet or encroaches upon or overhangs a street lower than 15 feet.
 - (b) Vegetation which obstructs motorist or pedestrian view of traffic, traffic signs and signals, street lights and name signs, or other safety fixtures or markings placed in the public way.
 - 2. Is a hazard to the public or to persons or property on or near the property where the vegetation is located.
 - 3. Is obnoxious as defined in section 6.815(1).
 - 4. Is an obstruction of access to and use of any public facilities placed within the public way.
 - 5. Is an obstruction of drainage facilities in the public way, including but not limited to roadside ditches, street curbs and gutters, catchbasins and culverts.

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6. The roots of which have entered a sewer, lateral sewer or house connection and are stopping, restricting or retarding the flow of sewage therein.
- (j) Vision obstructions. Any vegetation, structure, mounding of earth or other physical obstruction:
 1. Which encroaches upon the vision clearance area defined in subsection 9.0500 of this code; or
 2. Which is higher than 18 inches above the crown of the adjacent roadway in that portion of the right of way between the property line and the curb line within 35 feet from the intersection of curb lines, if extended, at any street intersection or within 15 feet from the intersection of the curb line with an alley. If no curb exists, no such use of the right of way shall be made within 25 feet of the corner of the private property closest to the street intersection.
- (k) Sidewalk accumulations. An accumulation of leaves, snow, ice, rubbish and other litter or any obstruction upon a sidewalk.
- (l) Unused driveways. Driveway approaches as defined in section 7.400 which are no longer in use.
- (m) Graffiti. Notwithstanding the definition of "graffiti" in section 6.005 of this code, neither the city nor a property owner shall be required to abate graffiti that consists of inscriptions, words, figures or designs that are etched or scratched into window or other glass of a public or private building.
- (n) Unlawful erosion. A violation of sections 6.625 to 6.645 of this code, the rules adopted thereunder, the erosion prevention permit or a condition thereon. Unlawful erosion includes the impacts of such erosion, on-site or off-site.
- (o) Failure to maintain stormwater facilities. A violation of sections 6.600 through 6.615 of this code, the Stormwater Management Manual adopted by administrative order of the city manager as authorized by section 9.6790 of this code, or an operations and maintenance agreement.
- (p) Others. Any other thing, substance, condition, or activity prohibited by state law, common law, this code, other ordinances, or which is determined by the council to be injurious or detrimental to the public health, safety, or welfare of the city.

(Section 6.010 amended by Ordinance No. 19146, enacted May 25, 1983; and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; administratively amended by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19969, enacted July 21, 1994; Ordinance No. 20165, enacted August 11, 1999, effective September 10, 1999; Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999; and Ordinance No. 20373, enacted November 22, 2006, effective December 22, 2006.)

6.015 Rodent Control - Conditions Attracting Rats Prohibited.

- (1) No owner or person in charge of property shall allow conditions to exist thereon or therein, which attract or are likely to attract, feed or harbor rats or mice. The conditions prohibited by this section are nuisances subject to abatement as provided in this code.
- (2) All portions of every building or other structure, other than residences, in which handling, storing or keeping any substance on which rats and mice can feed shall be rodent-proof.
- (3) All food for chickens, horses, mules, cows, goats, pigs or other domestic animals shall be kept and stored either in a building, structure, part thereof, or container that is rodent-proof.
- (4) All garbage or refuse consisting of waste material upon which rats or mice may feed shall be placed in covered rodent-proof containers of a type prescribed by the city manager or the manager's designee, until collected by garbage haulers.
- (5) All premises improved or unimproved, and all open lots, streets, sidewalks, alleys and other areas in the city shall be kept clean and free from all rubbish, as well as from loose material that might serve as a harbor for rats and mice. All lumber, boxes, barrels, loose iron and material that might harbor rats shall be placed upon supports in such manner as to provide no refuge for rats and mice.
- (6) All improvements, repairs, construction and maintenance of a building or structure, or any equipment or fixtures therein shall comply with this section.
- (7) The city manager or the manager's designee is hereby authorized and empowered to make inspection of the exterior, interior and underneath any building or structure or premises in the city. It shall be unlawful for an owner or person in charge of property to fail to permit such inspection when requested to do so in accordance with law.

(Section 6.015 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

6.050 Garbage and Debris - Disposition. An owner or person in charge of property shall dispose of perishable garbage before it becomes offensive promptly, but in any event at least bi-weekly; and not permit garbage to accumulate on or about the premises. All garbage shall be disposed of in a manner which does not create a nuisance and which is permitted by this chapter. Garbage may be disposed of by hauling or causing it to be hauled to the appropriate solid waste disposal site permitted by the Oregon Department of Environmental Quality to receive such waste.

(Section 6.050 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 18, 1987; and amended by Ordinance no. 20317, enacted April 15, 2004, effective May 15, 2004.)

6.055 Garbage Cans and Containers.

- (1) An owner or person in charge of property where garbage accumulates shall keep or cause to be kept on the premises one or more portable

containers of a standard type suitable for deposit of garbage and shall deposit or cause to be deposited in the containers all garbage that accumulates on the premises. Paper products and wooden wastes, however, may remain outside the containers if stored in a neat and orderly manner.

- (2) Garbage containers shall be sturdy, watertight, not easily corrodible, rodent-and-insect-proof, and have handles at the sides and tightly fitting lids. When not being emptied or filled, the containers shall be kept tightly closed. They shall be conveniently accessible to garbage haulers.

(Section 6.055 amended by Ordinance No. 16724, enacted February 26, 1973; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 20317, enacted April 15, 2004, effective May 15, 2004.)

6.080 Abatement Procedures - Notice.

- (1) If the city manager or the manager's designee is satisfied that a nuisance exists, he or she shall cause a notice to be posted on the premises or at the site of the nuisance directing a person responsible to abate the nuisance.
- (2) At the time of posting, the enforcing officer shall cause a copy of the notice to be personally served on any person responsible or to be forwarded by registered or certified mail, postage prepaid, to any person responsible at the person's last known address.
- (3) The notice to abate shall contain:
 - (a) A description of the real property, by street address or otherwise, on which the nuisance exists.
 - (b) A direction to abate the nuisance within 10 days from the date of the notice.
 - (c) A description of the nuisance.
 - (d) A statement that unless the nuisance is abated, the city may abate the nuisance and the cost of abatement shall be charged to the person responsible and assessed against the property.
 - (e) A statement that failure to abate a nuisance may result in a court prosecution.
 - (f) A statement that the person responsible may appeal the order to abate by giving notice to the enforcing officer within 10 days from the date of the notice.
- (4) Upon completion of the posting and serving or mailing, the enforcing officer shall execute and file certificates stating the date and place of the posting and serving or mailing respectively.
- (5) An error in the name or address of a person responsible shall not make the notice void and in such case the notice shall be sufficient.

(Section 6.080 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; amended by Ordinance No. 20165, enacted August 11, 1999, effective September 10, 1999; and Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999.)

6.085 Abatement Procedures - By a Person Responsible.

- (1) Within 10 days after the posting and serving or mailing of the of the notice required by section 6.080, a person responsible shall remove the nuisance or show that no nuisance exists.
- (2) A person responsible, protesting that no nuisance exists, shall file with the enforcing officer a written statement specifying the basis for protesting.
- (3) The statement shall be referred to the hearings official. The appellant shall be given at least five days' prior written notice of the time set to consider the abatement. The hearings official shall take oral or written testimony at the time and place specified in the notice. The hearings official shall prepare written findings of fact and conclusions of law when determining whether a nuisance exists. The hearing official's determination shall be final.
- (4) If the hearings official determines that a nuisance exists, a person responsible shall, within 10 days after the hearings official's determination, or within a time set by the hearings official, abate the nuisance.

(Section 6.085 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

6.090 Abatement Procedures - By the City.

- (1) If the nuisance has not been abated by a person responsible within the time allowed, or where there exist off-site impacts resulting from unlawful erosion, the city manager, or the manager's designee may cause the nuisance to be abated.
- (2) The officer charged with abatement of the nuisance, or contractors acting under the direction of the officer shall have the right at reasonable times to enter into or upon property in accordance with law to investigate or cause the removal of a nuisance, including remedying the impacts from unlawful erosion.
- (3) The finance officer shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include therein a reasonable charge for administrative overhead.
- (4) Notwithstanding subsections (1) through (3) of this section, in the event the nuisance is based on section 6.010(n) of this code, and the unlawful erosion adversely impacted public property or other privately owned, off-site property, the city may elect to abate those off-site impacts without providing any opportunity for the person responsible to abate the problems. When the city takes such action, the city may assess the responsible party for the total cost of that abatement including administrative overhead.

(Section 6.090 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999.)

6.095 **Abatement Procedures - Joint Responsibility.** If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

6.100 **Abatement Procedures - Assessment of Costs.**

- (1) The finance officer, by registered or certified mail, postage prepaid, shall forward to a person responsible a notice stating:
 - (a) The total cost of abatement including the administrative overhead.
 - (b) That the cost as indicated will be assessed to and become a lien against the property unless paid within ten days from the date of the notice.
 - (c) That if the person responsible objects to the cost of the abatement as indicated, the person responsible may file a written notice of objection with the finance officer not more than 10 days from the date of the notice.
- (2) Neither the owner nor person in charge of property shall be required to pay the expenses incurred by the city to abate graffiti, and no lien shall be imposed on such property for such costs.
- (3) The person responsible's objection to the costs of abatement shall be heard by a hearings official. The objector shall be given at least five days' prior written notice of the time set to consider his or her objections. The hearings official shall take oral or written testimony at the time and place specified in the notice. The hearings official shall determine the abatement costs to be assessed and shall communicate the decision in writing to the objector which writing shall also state that if the costs of abatement are not paid within ten days from the date of the decision, the costs shall be entered in the docket of city liens and upon such entry shall constitute a lien upon the property from which the nuisance was removed or abated or upon the abutting property when the nuisance was removed or abated from the public way.
- (4) If no objection is filed or if the assessed costs are not paid within ten days from the date of the notice, an assessment of the costs as stated shall be made by the finance officer and shall thereupon be entered in the docket of city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated or upon the abutting property when the nuisance was removed or abated from the adjoining public way. If the person responsible is not the owner of that property, then the city also may impose a lien upon property owned by the person responsible.
- (5) The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate prescribed in section 2.022 of this code. The interest shall commence from date of entry of the lien in the lien docket. For qualifying property owners the payment of the lien may be deferred, extended or modified as provided in sections 7.195 to 7.220 of this code.

- (6) An error in the name of a person responsible shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

(Section 6.100 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 20165, enacted August 11, 1999, effective September 10, 1999; and Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999.)

- 6.105** **Abatement Procedures - Separate from Penalty.** The requirement to abate a nuisance is not a penalty for violating this code but is an additional remedy. Abatement proceedings and prosecution of a nuisance may occur simultaneously. The imposition of a penalty does not relieve a person responsible of the duty to abate the nuisance; however, abatement by a person responsible of a nuisance within 10 days of the date of notice to abate, or if a written protest has been filed, then abatement within 10 days of the hearings official's determination that a nuisance exists, may be considered by the court in sentencing violators.

(Section 6.105 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

- 6.110** **Abatement Procedures - Summary Abatement.**

- (1) The procedure provided by sections 6.080 to 6.105 is not exclusive but is in addition to procedures provided by other laws. The city manager or the manager's designee may proceed to summarily abate a nuisance which unmistakably exists and which imminently endangers the environment, human life, health or property. The cost of such abatement may be assessed as provided in section 6.100.
- (2) The abatement of a nuisance under this section and the assessing of the costs therefor are not a penalty for violating this code but are additional remedies.

(Section 6.110 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999.)

- 6.115** **Legal Proceeding for Abatement.** A person whose interest in real property is or may be affected by a public nuisance or a nuisance affecting the public, as defined in this code, may, in addition to other remedies provided by law, institute abatement proceedings to abate or remove the unlawful thing, substance, condition, activity or use. To maintain such an action, the person must show:

- (a) The city manager, or the manager's designee, has issued a written notice of violation;
- (b) The city manager, or the manager's designee, has made a written determination that, in the exercise of the manager's discretion, the city does not then intend to initiate abatement proceedings.

(Section 6.115 added by Ordinance No. 19769, enacted April 22, 1991, effective May 22, 1991.)

Air Pollution Regulations

6.200 Outdoor Burning.

- (1) No person shall kindle, maintain or allow to be maintained, an outdoor fire, bonfire, rubbish fire or garbage fire; nor shall any person kindle, maintain or allow to be maintained a fire for the purpose of burning grass, hay or straw, tree limbs and trimmings; nor shall any person maintain or allow to be maintained a fire for land clearing operations, or commercial burning; nor shall any person kindle, maintain or allow to be maintained any other type of open burning with the following exceptions:
 - (a) Outdoor recreation fire used for cooking with the fire in a fireplace, barbecue set, or an outdoor fire used for cooking only.
 - (b) Recreation fire in an approved campsite in fire pits provided.
 - (c) Fires set and maintained for fire fighting training or training fire protection personnel.
 - (d) In cases of fire hazard that cannot in the judgment of the fire marshal be removed or disposed of in any other practical manner, a fire may be allowed by written permit only. Said permit is to be issued by the fire marshal.
- (2) No person shall accumulate or suffer or allow to accumulate material which in the judgment of the fire marshal constitute a fire hazard. Any such accumulation is a nuisance and subject to abatement as provided in this Code.

6.205 Motor Vehicle Emissions - Definitions. For the purposes of sections 6.210 to 6.220, the following words and phrases shall mean:

Motor vehicle. A self-propelled vehicle designed and used for transporting persons or property on a public way.

Opacity. The degree to which transmitted light is obscured, expressed in percent.

Person. An individual, public or private corporation, political subdivision, agency, board, department or bureau of the state, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Visible emissions. Gases or particulates, excluding uncombined water, which separately or in combination are visible on release to the outdoor atmosphere.

6.210 Motor Vehicle Emissions - General Requirements.

- (1) No person shall operate, drive or cause or permit to be driven or operated any motor vehicle on a public way which emits into the atmosphere any visible emission. Excluded from this section are those motor vehicles:
 - (a) Powered by compression ignition or diesel cycle engines.
 - (b) By written order of the Department of Environmental Quality pursuant to ORS 449.810.
- (2) No person shall operate, drive, or cause or permit to be driven or operated upon a public way a motor vehicle excluded from subsection (1) above, which emits visible emission into the atmosphere:
 - (a) Of an opacity greater than 40 percent.
 - (b) Of an opacity of 10 percent or greater for a period exceeding seven consecutive seconds.
- (3) Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements of subsections (1) or (2), such subsections shall not apply.

6.215 Motor Vehicle Emissions - Method of Measurement. The opacity observation, for purposes of these regulations, shall be made by a person trained as an observer; provided, however, that the Opacity Chart, marked Exhibit "A" and on file in the city with instructions for use, and by reference incorporated into this Code, may be used in measuring the opacity of emissions for the purposes of these regulations.

(Section 6.215 amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

6.220 Motor Vehicle Emissions - Enforcement. Any person who drives, operates, or causes or permits to be driven or operated on a public way a motor vehicle which emits visible emissions into the atmosphere in violation of section 6.210(1) or (2) shall be ordered to bring the vehicle into conformity with these regulations. Said person must present the vehicle to the police department within 15 days for inspection and verification that the vehicle has been corrected to conform to these regulations, unless within such time evidence is presented that the vehicle will no longer be operated on a public way. Notice of nonconformity with these regulations may be given on the Inspection Check List, marked Exhibit "B", and on file in the city and by this reference incorporated into this Code.

(Section 6.220 amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

**See Ordinance No. 16112.*

Tobacco Products and Smoking

6.225 **Definitions.** For the purposes of sections 6.230 to 6.240 of this code, the following words and phrases mean:

Bar. An area that is devoted to the serving of alcoholic beverages for consumption by guests on premises and in which the serving of food is only incidental to the consumption of such beverages.

Business. Any sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

Employee. Any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity. This definition includes independent contractors.

Employer. Any person or entity who employs the services of one or more individuals.

Enclosed area. All space between a floor and a ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structure.

Place of employment. Any enclosed area under the control of a public or private employer which employees normally access during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and class rooms, cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place. Any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, banks, education facilities, health facilities, laundromats, public transportation, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

Public transportation. Any motorized vehicle used to transport people which is held out for hire by the public or used by a public or private elementary or secondary school to transport students.

Restaurant. Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment that gives or offers food for sale to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail tobacco store. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Service line. Any indoor line, or any portion of an indoor line that extends out of doors, at which one or more persons is waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

Smoking. Any inhaling, exhaling, burning, or carrying of any lighted pipe, cigar, cigarette, or other tobacco-like product or substance in any manner or in any form.

Sports facility. Any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, or other enclosed places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Tobacco product. Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco that may be utilized for smoking, chewing, inhalation, or other means of ingestion.

(Section 6.225 added by Ordinance No. 18721, enacted November 12, 1980; amended by Ordinance No. 20212, enacted September 25, 2000, effective October 26, 2000; and Ordinance No. 20338, enacted March 4, 2005, effective April 3, 2005.)

6.230 Smoking Prohibited in Public Places and Places of Employment.

- (1)** Nothing in sections 6.225 to 6.240 shall be construed to in any way affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations.
- (2)** Smoking is prohibited in all public places and all places of employment within the city, including, but not limited to the following:
 - (a) All elevators.
 - (b) Rest rooms, lobbies, reception areas, hallways, and any other areas of common use.
 - (c) Buses, taxicabs, and any other means of public transportation.
 - (d) Service lines, or within ten feet of a service line that extends out of doors.
 - (e) Retail stores.

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- (f) All areas available and customarily used by the general public located in a business patronized by the public, including non-profit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels.
- (g) All restaurants, taverns, bars, cocktail lounges and bingo parlors.
- (h) Any enclosed facility that is primarily used for exhibiting any motion picture, stage or drama production, lecture, music recital or other similar performance, except for performers when smoking is part of a stage or drama production.
- (i) Sports facilities.
- (j) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, or committee, including joint committees or agencies of the city, during the time a public meeting is in progress.
- (k) Within publicly owned buildings and within 25 feet of any entrance or air intake to, or any operable window of, any such building. However, notwithstanding the foregoing prohibition, a private establishment that is located in a city-owned building and that has a separate entrance may have an outdoor smoking area if it complies with other provisions of this code and any rules adopted by the city manager to implement this section, and no smoking occurs within 25 feet of an entrance, air intake to or operable window of another business, agency or establishment located within the same city-owned building.
- (l) Waiting rooms, hallways, wards, and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, and doctor's and dentist's offices.
- (m) Lobbies, hallways, and other enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (n) Polling places.
- (o) Within a reasonable distance, of not less than ten feet, of any entrance to any enclosed area where smoking is prohibited.
- (p) The exterior of city-owned buildings a primary purpose of which is to provide services and programs to children under the age of 18, including but not limited to libraries, pools, sports parks and community centers. The city manager shall adopt an administrative order that identifies the specific facilities covered by this subsection. For purposes of this subsection, "exterior" means the area outside of the building extending from the building footprint to the curb, including but not limited to driveways, planting strips, sidewalks, pedestrian ways, patios and alleys adjacent to the city-owned building, but not extending into any non-city owned property adjacent to the building or onto the

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roadway. Notwithstanding the prohibition contained in this section, if a private establishment is located in a city-owned building, the provisions of subsection (2)(k) of this section related to private establishments shall apply.

- (3) Employers are required to provide for all employees a place of employment in which employees are not exposed to the smoking of others.

(Section 6.230 added by Ordinance No. 18721, enacted November 12, 1980; amended by Ordinance No. 20212, enacted September 25, 2000, effective October 26, 2000; Ordinance No. 20215, enacted November 13, 2000, effective December 13, 2000; Ordinance No. 20338, enacted March 4, 2005, effective April 3, 2005; Ordinance No. 20451, enacted February 8, 2010; effective March 12, 2010.)

6.235 Smoking Prohibited - Enforcement.

- (1) In every building or enclosed area in which smoking is prohibited by section 6.230 of this code, a "No Smoking" sign shall be conspicuously posted by the owner, manager, or other person having control of the building or area. The signs shall be of a form and size approved by the city manager and contain a reference that regulation is by sections 6.225 to 6.240 of this code.
- (2) At primary entrances to public places or publicly owned buildings in which smoking is prohibited by section 6.230 of this code, the owner or manager of such place or building shall post a "No Smoking" sign so that the sign is plainly visible from the outside of the entrance. The signs shall be of a form and size approved by the city manager and contain a reference that regulation is by sections 6.225 to 6.240 of this code.
- (3) It shall be unlawful for any person to remove, deface, or destroy any sign required by this section.
- (4) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because the employee, applicant, or customer reports or attempts to prosecute a violation of section 6.230 of this code.
- (5) Any person who violates a provision of section 6.230 or 6.235, or any business, owner, or employer who permits a violation to occur, shall be subject to the penalties provided in section 6.990(12), an administrative civil penalty pursuant to section 6.995 of this code, or both such fine and penalty.

(Section 6.235 added by Ordinance No. 18721, enacted November 12, 1980; amended by Ordinance No. 20212, enacted September 25, 2000, effective October 26, 2000; and Ordinance No. 20338, enacted March 4, 2005, effective April 3, 2005; subsection (5) administratively amended by Ordinance No. 20338.)

6.240 Smoking Prohibited - Exceptions. The restrictions set forth in sections 6.230 and 6.235 of this code do not apply to:

- (a) Private residences, unless the private residence is used as a child care, adult day care, or health care facility;
- (b) Rented motel/hotel rooms that are designated in some manner as smoking rooms by the owner of the establishment renting the room;

- (c) Private rooms rented for an occupancy that exceeds one month and not located in a private residence used as a child care, adult day care, or health care facility;
- (d) Retail tobacco stores; or
- (e) Designated smoking entrances.

(Section 6.240 added by Ordinance No. 20212, enacted September 25, 2000, effective October 26, 2000; and amended by Ordinance No. 20215, enacted November 13, 2000, effective December 13, 2000.)

Solid Fuel Space Heating Devices

6.250 **Solid Fuel Space Heating Devices - Definitions.** As used in sections 6.255 to 6.265, the following words and phrases mean:

City manager. City manager or designee, including, if the city manager so designates, LRAPA.

Green advisory. A 24-hour period beginning at 4:00 p.m. when PM10 levels are forecast by LRAPA to be less than 100 micrograms per cubic meter and PM2.5 levels are forecast to be less than 25 micrograms per cubic meter.

LRAPA. Lane Regional Air Pollution Authority, a regional air quality control authority established under the provisions of, and with authority and powers derived from, Oregon Revised Statutes 468.500 et seq.

Opacity. The degree to which an emission reduces transmission of light or obscures the view of an object in the background.

Pellet stove. An enclosed solid fuel space heating device designed and operated to burn manufactured solid fuel and having an air-to-fuel ratio greater than 35-to-1 as determined by the federal test method described in 40 CFR Part 60.534.

Person. Any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

Person in charge of property. An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.

PM2.5. Solid or liquid particulate matter (excluding uncombined water) with an aerodynamic diameter less than or equal to 2.5 micrometers.

PM10. Solid or liquid particulate matter (excluding uncombined water) with an aerodynamic diameter less than or equal to 10 micrometers.

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Sole source of heat. A solid fuel space heating device which constitutes the only source of heating in a private residence. A solid fuel space heating device shall not be considered to be the sole source of heat if the private residence is equipped with any permanently installed furnace or heating system utilizing oil, natural gas, electricity or propane.

Solid fuel space heating device. Any device designed or operated to burn solid fuel for the heating of the interior of a building, including, but not limited to, solid fuel burning stoves, fireplaces or wood stoves of any nature, combination fuel furnaces or boilers used for space heating which can burn solid fuel, and solid fuel burning cooking stoves. "Solid fuel space heating device" does not include natural gas fired artificial fireplaces.

Stage I red advisory. A 24-hour period beginning at 4:00 p.m. when PM10 levels are forecast by LRAPA to be greater than or equal to 125 micrograms per cubic meter but less than 150 micrograms per cubic meter, or when PM2.5 levels are forecast by LRAPA to be greater than or equal to 30 micrograms per cubic meter but less than 35 micrograms per cubic meter, within the Eugene-Springfield Metropolitan Area General Plan Urban Growth Boundary.

Stage II red advisory. A 24-hour period beginning at 4:00 p.m. when PM10 levels are forecast by LRAPA to be greater than or equal to 150 micrograms per cubic meter, or when PM2.5 levels are forecast by LRAPA to be greater than or equal to 35 micrograms per cubic meter, within the Eugene-Springfield Metropolitan Area General Plan Urban Growth Boundary.

Visible emissions. The reduction in transmission of light or the obscuring of the view of an object in the background caused by the air pollutants emitted by the heating device. This does not include the visual distortion caused by the heated air emitted by the heating device.

Yellow advisory. A 24-hour period beginning at 4:00 p.m. when PM10 levels are forecast by LRAPA to be greater than or equal to 100 micrograms per cubic meter but less than 125 micrograms per cubic meter, or when PM2.5 levels are forecast to be greater than or equal to 25 micrograms per cubic meter but less than 30 micrograms per cubic meter.

(Section 6.250 added by Ordinance No. 19731, enacted November 5, 1990, effective January 1, 1991; amended by Ordinance No. 19815, enacted December 2, 1991; Ordinance No. 20261, enacted July 22, 2002, effective August 22, 2002; and Ordinance No. 20399, enacted November 26, 2007, effective December 28, 2007.)

6.255 Solid Fuel Space Heating Devices - Prohibitions.

- (1)** No person in charge of property during a Stage I Red Advisory shall operate or allow to be operated a solid fuel space heating device which emits visible emissions into the air outside of the building housing the

device, unless the person has been granted an exemption to use the device by the city manager.

- (2) No person in charge of property during a Stage II Red Advisory shall operate or allow to be operated a solid fuel space heating device unless:
 - (a) The person has been granted an exemption to use the device by the city manager; or
 - (b) The person is operating a pellet stove which emits no visible emissions into the air outside of the building housing the device.
- (3) No person in charge of property shall at any time allow to be initiated or maintained in a solid-fuel space-heating device the burning of any plastics, wire insulation, petroleum by-products (with the exception of natural-gas-fueled log lighters), petroleum-treated materials, rubber products, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food, or of any other material which normally emits dense smoke, noxious odors, or hazardous air contaminants.
- (4) During a green or yellow advisory, no person in charge of property shall operate or allow to be operated a solid-fuel space-heating device which discharges emissions that are of an opacity greater than 40 percent. This provision does not apply to the emissions during the building of a new fire, for a period or periods aggregating no more than ten minutes in any four-hour period.

(Section 6.255 added by Ordinance No. 19731, enacted November 5, 1990, effective January 1, 1991; amended by Ordinance No. 19815, enacted December 2, 1991; and Ordinance No. 20261, enacted July 22, 2002, effective August 22, 2002.)

6.260 **Solid Fuel Space Heating Devices - Exemptions.** Notwithstanding section 6.255 of this code, a person in charge of property may operate a solid fuel space heating device during a Stage I or Stage II Red Advisory if that person has previously obtained one of the following exemptions from the city manager:

- (a) **Sole source of heat exemption.** A person in charge of property who signs a sworn statement that their solid fuel space heating device is the sole source of heat for their residence. This exemption shall expire on July 1 of each year and must be renewed annually. This exemption shall not be issued after June 30, 1996.
- (b) **Economic need exemption.** Persons in charge of property who satisfy criteria established under the Low Income Energy Assistance Program as administered by the Lane County Housing Authority and as established by the United States Department of Energy. This exemption shall expire on July 1 of each year and must be renewed annually thereafter.

(Section 6.260 added by Ordinance No. 19731, enacted November 5, 1990, effective January 1, 1991.)

6.265 **Solid Fuel Space Heating Devices - Enforcement.** In addition to, and not in lieu of any other enforcement mechanism authorized by this code, upon a determination that a person has violated section 6.255 of this code, the city manager may impose upon the violator and any other person in charge of the property, an administrative penalty not greater than \$500, as provided by section 2.018 of this code. The city manager also is authorized to designate LRAPA to enforce and administer the provisions of sections 2.655 to 2.670 of this code, including LRAPA's use of administrative and hearing procedures adopted by LRAPA in its duly promulgated regulations.

(Section 6.265 added by Ordinance No. 19731, enacted November 5, 1990, effective January 1, 1991.)

Tree Preservation

6.300 **Definitions.** As used in section 6.305 to 6.330 of this Code, the following definitions apply:

Fell. To remove or sever a tree or the intentional use of any procedure the natural result of which is to cause the death or substantial destruction of the tree. Fell does not in any context include normal trimming, pruning, or topping of trees.

Heritage tree. Any tree of exceptional value to our community based on its size (relative to species), history, location, or species, or any combination of these criteria. The specific methodology for classifying a tree as a heritage tree shall be established by administrative rule of the city manager adopted pursuant to section 2.019 of this code.

Logging plan. A document describing the equipment to be used on site, the access roads, grading, skid paths and any other environmental change that will be affected to permit logging, as well as mitigation efforts designed to protect from the negative effects of the logging process all wetlands, riparian zones, habitat, neighboring residences, and such other areas as the city manager or designee determines is appropriate.

Occupied parcel. Real property within the boundaries of an ad valorem tax lot description as found in the Lane County, Oregon, ad valorem tax records with one or more dwellings thereon, or a parcel which has been approved for a dwelling.

Parcel. Real property within the boundaries of an ad valorem tax lot description as found in the Lane County, Oregon, ad valorem tax records.

Plot plan. Final subdivision plat, final PUD plan, or final major or minor partition, encompassing an entire contiguous ownership.

Street tree. A living, standing woody plant typically having a single trunk at least 1-1/2 inch in diameter at a point six inches above mean ground level at the base of the trunk, that is located within the street right-of-way.

Tree. A living, standing, woody plant having a trunk 25 inches in circumference (or approximately eight inches in diameter) at a point 4-1/2 feet above mean ground level at the base of the trunk.

(Section 6.300 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18122, enacted February 22, 1978; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; Ordinance No. 19927, enacted July 12, 1993; and Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)

6.305 Tree Felling Prohibition.

- (1) Except as provided in section 6.330, no person may fell more than five trees within a period of 12 consecutive months from a parcel of private property consisting of 20,000 or more square feet of area without a permit.
- (2) Except as provided in section 6.330, no person may fell one or more trees from a parcel of private property consisting of less than 20,000 square feet of area without a permit.
- (3) Notwithstanding subsections (1) and (2) of this section and section 6.330(b) of this code, no person shall remove a street tree without first obtaining a permit from the city manager specifically authorizing the removal of a street tree. Permit approval may be conditioned upon replacement of the street tree with another tree pre-approved by the city, or a requirement to pay to the city an amount sufficient to fund the planting and establishment by the city of a tree of similar value. The value of the existing street tree to be removed shall be calculated using the methods set forth in the edition then in effect of the Guide for Plant Appraisal published by the International Society of Arboriculture Council of Tree Landscape Appraisers.
- (4) Notwithstanding subsections (1) and (2) of this section and section 6.330(b) of this code, no person shall fell a heritage tree from within the public right-of-way except where such removal, and authorization for its removal, has been granted by the city because its removal is necessary to protect the public health, safety, or welfare.

(Section 6.305 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18122, enacted February 22, 1968; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 19927, enacted July 12, 1993; and Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)

6.310 Procedure for Obtaining Tree Felling Permit.

- (1) A person shall apply to the city manager or designee for a tree felling permit, on an application form developed by the city manager or designee.
- (2) The application shall be accompanied by an application fee in an amount established by the city manager pursuant to section 2.020 of this code.
- (3) The application also shall be accompanied by a logging plan if the applicant proposes to fell more than ten trees.
- (4) If the applicant proposes to fell ten or less trees, then the city manager or designee shall act on the permit within ten business days of receiving a completed application. The city manager or designee may extend the response time to up to 30 days if he/she determines that public notice of the application should be given and public comment taken pursuant to subsection (6) of this section, because substantial impacts on neighboring properties or on other natural values are anticipated.

- (5) If the applicant proposes to fell more than ten trees, then the city manager or designee shall act on the permit within 30 days of receiving a completed application, but only after giving public notice of the application and an opportunity to provide comments as provided in subsection (6) of this section.
- (6) Where public notice and a comment period is required before acting on an application, the city manager or designee shall identify abutting properties and others which are partly or wholly within 200 feet of the site on which the trees are to be felled. Written notice of the application shall be mailed by the city manager or designee to the owners and occupants of the identified properties, as well as to persons who have requested such notice. The notice shall provide that persons may submit written comments on the application as directed in the notice, for a period of 15 days from the date of the notice.

(Section 6.310 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; and Ordinance No. 19927, enacted July 12, 1993.)

6.320 Criteria for Permit Issuance.

- (1) The city manager or designee shall approve, approve with conditions, or deny a permit application based on consideration of the following criteria:
 - (a) The condition of the trees with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular traffic safety;
 - (b) The topography of the land and the effect of felling on erosion, soil retention, stability of earth, flow and character of surface waters and streams, protection of nearby trees and windbreaks;
 - (c) The effect the trees' removal has on the environmental quality of the area, including scenic and wildlife habitat values;
 - (d) The necessity to remove trees in order to construct proposed improvements, or to otherwise utilize the applicant's property in a manner consistent with its zoning, this code, the Metro Plan, and other applicable adopted plans;
 - (e) Fire safety considerations where, in the opinion of the fire marshal, removal is necessary to protect existing or proposed structures;
 - (f) The adequacy of the applicant's proposals, if any, to plant new trees or native vegetation to mitigate the environmental effects of removal of the trees to be felled; and
 - (g) That the felling would be compatible with generally accepted principles of horticulture, silvaculture, ecology, or landscape architecture;
 - (h) The compatibility of the felling with guidelines adopted by the Oregon Department of Forestry.

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- (2) In the event a plot plan for full development of the site has not been approved by the city, felling of trees shall be permitted only on a limited basis consistent with the preservation of the site's future development potential and preservation of important natural values as prescribed in the Metro Plan and this code, and consistent with the following criteria:
 - (a) Wooded areas associated with natural drainage ways and water areas shall be retained to preserve riparian habitat and to minimize erosion;
 - (b) Wooded areas that will likely provide an attractive on-site amenity to occupants of future developments shall be retained;
 - (c) Wooded areas along ridgelines and hilltops shall be retained for their scenic and wildlife habitat values;
 - (d) Wooded areas along property lines shall be retained to provide buffers from adjacent properties;
 - (e) Trees shall be retained in sufficiently large areas and dense stands so as to ensure against windthrow;
 - (f) Clear cuts of developable areas shall be avoided so as to retain a wooded character of future building sites, and preserve housing and design options for future city residents.
- (3) The city manager or designee may attach conditions to the approval of a permit to ensure the replacement of trees, landscape or otherwise reduce the effects of the felling, and may require the posting of a bond to ensure that all conditions are met.

(Section 6.320 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18053, enacted September 26, 1977; Ordinance No. 18123, enacted March 13, 1978; and Ordinance No. 19927, enacted July 12, 1993.)

6.325 **Appeal.** Any person who is denied a permit, or is granted a permit with conditions, may appeal the denial or imposition of conditions, by filing a written notice of appeal with the city manager or designee within 15 days of the date of denial or the date of issuance of the permit with conditions imposed. In addition, any person who provided comments on an application pursuant to section 6.310(6), and who is dissatisfied with the action of the city manager or designee in granting a permit, whether with or without conditions, also may appeal by following the same procedures. The appeal shall be governed by section 2.021 of this code. The appeal must include the specific basis or bases upon which the appellant asserts that the decision was in error.

(Section 6.325 added by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 19926, enacted June 28, 1993; and Ordinance No. 19927, enacted July 12, 1993.)

6.330 **Trees, Felling - Exceptions.** The requirements and restrictions of sections 6.305 to 6.310 of this code or rules adopted thereunder do not apply to:

- (a) The action of any city officer or employe or of any public utility necessary to remove or alleviate an immediate danger to life or

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property; to restore utility service; or to reopen a public thoroughfare to traffic;

- (b)** An occupied parcel of private property consisting of less than 20,000 square feet of area;
- (c)** Felling of trees that are nuisances under section 6.010 of this code;
- (d)** Felling of trees that are in violation of section 7.640 of this code;
- (e)** Any felling necessary to install or maintain improvements such as streets and sewers within publicly owned and accepted rights-of-way or utility easements;
- (f)** That portion of a PUD and/or PUD subdivision development for which final approval has been obtained.

(Section 6.330 amended by Ordinance No. 17072, enacted May 20, 1974; amended by Ordinance No. 18053, enacted September 26, 1977; Ordinance No. 18122, enacted February 22, 1978; Ordinance No. 18123, enacted March 13, 1978; Ordinance No. 18779, enacted April 22, 1981; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19927, enacted July 12, 1993.)

HAZARDOUS SUBSTANCE DISCHARGE AND REMOVAL

6.340 **Hazardous Substance - Definitions.** For purposes of sections 6.345 to 6.380, the following words and phrases mean:

City Manager. City Manager or designee.

Environment. Waters in the city, surface and underground drinking water supply, land surface, subsurface strata and ambient air.

Facility. Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

Hazardous Substance. Any hazardous waste as defined in ORS 466.005; any substance defined as a hazardous substance pursuant to Section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499; oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse of any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

Owner or operator. Any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

Person. An individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers, underground storage tanks and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

- (a) Any release which results in exposure to a person solely within a work place, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;
- (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

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- (c) Any release of source, by-product or special nuclear material from a nuclear incident, as these terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of any removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978;
- (d) A discharge in accordance with federal, state or local governing regulations or permits of the Lane Regional Air Pollution Authority, with a National Pollutant Discharge Elimination System Permit, with waste discharge requirements established by the Oregon Department of Environmental Quality (DEQ), or with the sewer pretreatment requirements of the Industrial Monitoring Section of the city's Public Works Department's Wastewater Division;
- (e) The normal application of fertilizer
- (f) Application of pesticides as defined by ORS Chapter 634, when such application is made within the provision of applicable state and federal regulations;
- (g) Application of agricultural lime, gypsum and other agricultural/horticultural soil amendments when made for that purpose and according to current industry practice;
- (h) Application of water based paint, when used as athletic field marking; and
- (I) Any release from a residential heating oil tank serving an owner-occupied single family dwelling.

Removal. The cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety or welfare which may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

Removal action costs. Reasonable costs which are attributable to or associated with a removal action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

Responsible Party. The current owner or operator; any owner or operator at or during the time of the acts or omissions that resulted in the release; any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator; any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge; any person who unlawfully hinders or delays entry to, investigation of or removal action at a facility; and any person who, by any acts or omissions, caused, contributed to, or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

Underground storage tank. Any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is ten percent or more beneath the surface of the ground.

Waters. Includes lakes, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, canals, and all other bodies of surface or underground waters, natural or artificial, public or private, which are wholly or partially within the city or within its jurisdiction.

(Section 6.340 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992; and amended by Ordinance No. 20301, enacted November 10, 2003, effective December 10, 2003.)

- 6.345 Hazardous Substance - Purpose.** The release of hazardous substances into the environment may present imminent and substantial threats to the public health, safety and welfare. In some, but not all cases, the United States Environmental Protection Agency or the Oregon Department of Environmental Quality become involved to ensure cleanup of contamination. It is not the intent of sections 6.345 to 6.380 of this code to have the city become involved where the Environmental Protection Agency and Department of Environmental Quality are involved. Due to the limited resources of the Environmental Protection Agency and Department of Environmental Quality, however, those agencies do not always have the ability to immediately respond to the release or identification of hazardous substances which threaten the public health, safety and welfare. The purpose of sections 6.345 to 6.380 is to minimize those threats by ensuring:
- (a) Prompt identification of discharges or threats of discharges into the environment of hazardous substances which present imminent risks to the public health, safety and welfare; and
 - (b) Implementation of removal actions.

The authorizations contained in sections 6.340 to 6.380 of this code are in addition to any other authority the city manager may have under other provisions of this code or applicable federal or state laws or regulations.

(Section 6.345 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.350 Hazardous Substance - City Manager Authority to Undertake Removal Action.

- (1) In addition to any other authority granted by law, the city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may:
 - (a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal action and to carry out the provisions of sections 6.345 to 6.380.
 - (b) Recover the city's removal action costs.
- (2) Each responsible party is jointly, severally and strictly liable for those removal action costs incurred by the city that are attributable to or associated with a facility.

(Section 6.350 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.355 Hazardous Substance - Prohibition on Releases. Unless authorized by state or federal law, no person may release, or cause to be released, any hazardous substance into the environment, or into the waters upstream of the boundaries of the city when such release results in detectable levels of contamination in the waters that subsequently enter the city's jurisdiction.

(Section 6.355 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.360 Hazardous Substance - Duty to Report. Any person who releases, or who causes or discovers a release of, a hazardous substance into the environment shall immediately report the release to the city if state or federal law imposes an obligation on such person to report the release to a state or federal agency.

(Section 6.360 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.365 Hazardous Substance - Assessment, Evaluation and Investigation.

- (1) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may undertake any assessment, evaluation or investigation of known or suspected contamination where necessary to protect the public health, safety and welfare. Notwithstanding the foregoing, nothing in this section 6.365 authorizes the city manager to undertake, or to order any action related to property which is subject to an enforceable order issued by the Oregon Department of Environmental Quality or United States Environmental Protection Agency if the order

requires investigation or remediation of suspected or known contamination.

- (2) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may authorize any person to carry out any assessment, evaluation or investigation in accordance with any requirements of or directions from the city manager, if the city manager determines that the person will commence and complete the assessment, evaluation or investigation properly and in a timely manner.
- (3) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may require any responsible party to conduct any assessment, evaluation or investigation which the city manager determines is necessary to protect the public health, safety and welfare. An order of the city manager is appealable only as provided by subsection (4) of this section.
- (4) Any person who receives and complies with the terms of an order issued pursuant to subsection (3) of this section may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to a hearings officer in accordance with the timelines and procedures established by section 2.021 of this code. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party, and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order; these criteria are the sole basis for reimbursement.
- (5) If any responsible party fails without sufficient cause to conduct an assessment, evaluation or investigation as required by an order of the city manager under subsection (3) of this section the responsible party shall be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

(Section 6.365 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.370 Hazardous Substance - Removal Action.

- (1) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may undertake any removal action necessary to protect the public health, safety and welfare. Notwithstanding the foregoing, nothing in this section authorizes the city manager to undertake or order any action related to property which is subject to an enforceable order issued by the Oregon Department of Environmental Quality or United States Environmental Protection Agency if the order requires investigation or removal of suspected or known contamination.

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- (2) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may authorize any person to carry out any removal action in accordance with any requirements of or directions from the city manager, if the city manager determines that the person will commence and complete removal action properly and in a timely manner.
- (3) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may require any responsible party to conduct any removal action necessary to protect the public health, safety and welfare. The city manager's action under this subsection may include but need not be limited to issuing an order specifying the removal action the person must take. An order of the city manager is appealable only as provided by subsection (4) of this section.
- (4) Any person who receives and complies with the terms of an order issued pursuant to subsection (3) of this section may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to a hearings officer in accordance with the timelines and procedures established by section 2.021 of this code. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party, and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order; these criteria are the sole basis for reimbursement.
- (5) If any responsible party fails without sufficient cause to conduct a removal action as required by an order of the city manager issued under subsection (3) of this section, the responsible party shall be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

(Section 6.370 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.375 **Hazardous Substance - Prohibition on Building.** Where the city manager has reason to believe that a proposed building site is contaminated by a release of hazardous substances, and that such contamination poses an imminent threat to the public health, safety and welfare, the city manager may refuse to issue a building permit, or where a permit has been issued, stop work on the permit, until such time as a removal action is implemented. If the responsible party can demonstrate that construction and the removal action can occur simultaneously, and satisfies the city manager that the removal action will continue even if construction is allowed to proceed, the city manager may authorize construction to continue or may issue permits prior to completion of the removal action. In order to ensure completion of the removal action, the city manager may require a bond in an amount sufficient to cover the costs of the removal action.

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(Section 6.375 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

6.380 **Hazardous Substance - Violations.** In addition to the penalties set forth in subsections (8), (9), and (10) of section 6.990 of this code:

- (a)** For violations of sections 6.345 to 6.375 of this code, the city manager may proceed either by imposing an administrative civil penalty pursuant to section 2.018 of this code, except that the amount of the penalty shall be governed by subsection (b) of this section or subsections (8), (9) or (10) of section 6.990, or by citing responsible party into municipal court.
- (b)** In setting the amount of a civil penalty, the city manager (for an administrative civil penalty) and the municipal court shall impose a penalty sufficient to deter persons from violating sections 6.345 to 6.375 of this code, and shall be not less than three times the economic benefit which the responsible party would derive if the violation had not been discovered.

(Section 6.380 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)

Sewerage Systems

6.401 **Intention to Operate Sewerage Systems.** The council hereby declares its intention by contract or otherwise, to acquire, own, construct, reconstruct, equip, operate and maintain within and without the city limits complete stormwater and wastewater systems.

(Section 6.401, formerly Section 7.015 amended by Ordinance No. 18708, enacted September 22, 1980; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.406 **Definitions.** For purposes of sections 6.401 through 6.645, unless the context requires otherwise words and phrases shall have the meaning ascribed to them. In interpreting the meaning of words in a definition, other definitions of that word in this Code may be considered:

BOD (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 Celsius expressed in milligrams per liter.

City Manager. The city manager of the City of Eugene, or the city manager's designee.

City sewer. The stormwater and wastewater systems of the city of Eugene. This includes, but is not limited to, facilities owned by other public agencies to the extent the city is contractually obligated.

City stormwater system. Those stormwater facilities located on city-owned property, city right-of-way, city easements and any stormwater facility the city is contractually or legally obligated to operate and maintain, including but not limited to:

- (a) An open drainage way, headwater stream, creek, wetland, spring, or pond, including those not maintained by the city which drain onto city-owned property or into city maintained facilities;
- (b) A pipe or sewer and its related appurtenances that carry stormwater and have been designed and constructed expressly for use by the general public and accepted by the city
- (c) Streets, curbs and gutters and other surfaces in the public way which are designed to carry stormwater, roadside drainage ditches along unimproved city streets but not access drive culverts; and
- (d) Flood control and stormwater quality facilities (levees, dikes, overflow channels, swales, biofiltration facilities, infiltration facilities, detention basins, retention basins, dams, pump stations, groundwater recharging basins, sediment traps, wetlands, etc.) that have been designed and constructed expressly for use by the general public and accepted by the city.

City wastewater system. A treatment works as defined by section 212 of the Act as defined in section 6.506 of this code. This definition includes any publicly owned sewer that conveys wastewater to the treatment plant, whether or not a part of the regional sewerage facilities as defined in the Intergovernmental Agreement executed by the cities of Eugene and Springfield and Lane County as of July 1, 1991 (Intergovernmental Agreement), but does not include the city stormwater system.

Construction activity. An activity used in the process of developing, redeveloping, enhancing, or maintaining land, including, but not limited to: land disturbance, building construction, paving and surfacing, storage and disposal of construction related materials.

Construction related materials. Potential water quality pollutants that are used or created during construction activities including, but not limited to, off-site deposits of sediments by vehicles (e.g., tracking, spilling), building material wastes (e.g., scrap metals, rubber, plastic, glass, masonry, wood; paints and thinners; packaging materials; insulation, plaster grout); hazardous substances (e.g., cleaning solvents, chemical additives, concrete curing compounds, acids for cleaning masonry surfaces, paints, thinners); and concrete washout.

Construction site management plan. A set of maps, data, drawings, and narrative that describes expected runoff from new construction sites, and establishes measures to be taken for preventing erosion, sediments, and other pollutants from construction related activities.

Customer. Any person responsible who is authorized to request sewer service, or who is receiving sewer service from the city, or who is responsible for the payment of the charge for sewer service.

Development. Any man-made change to improved or unimproved real property including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Dewatering. The removal and disposal of surface water or groundwater for purposes of preparing a site for construction.

Duplex. A building under single ownership which is designed or used exclusively for the occupancy of two families living independently of each other and having separate housekeeping facilities for each family.

Dwelling unit. A facility designed for permanent or semi-permanent occupancy by a single family and provided with minimum kitchen, sleeping and sanitary facilities.

Emergency condition. An immediate danger to life, property, or the environment due to circumstances beyond the control of the property owner including, but not limited to, natural and human-caused disasters such as fires, floods, slides, earthquakes, sinkholes and tree blow-down.

Equivalent service unit or ESU. A common measure of impervious surface which is 1,000 square feet and which is used as the basis for calculating the stormwater service charge for a customer.

Fully developed property. A parcel of land that contains buildings, pavement, and other facilities, including landscaped areas, and due to these uses the parcel cannot be further developed.

General stormwater customer. Any person responsible who uses stormwater service except a customer with small residential property or medium residential property.

General wastewater customer. (For the regional wastewater treatment service portion of wastewater service charge):

- (a) Low strength. A customer with combined BOD and SS loadings less than or equal to 400 milligrams per liter (mg/l).
- (b) Medium strength. A customer with combined BOD and SS strengths greater than 400 mg/l and less than or equal to 800 mg/l.
- (c) High strength. A customer with a combined BOD and SS wastewater strength of greater than 800 mg/l and less than or equal to 1,200 mg/l.
- (d) Very high strength. A customer with a combined BOD and SS wastewater strength of greater than 1,200 and less than or equal to 1,600 mg/l.
- (e) Super high strength. A customer with a combined BOD and SS wastewater strength of greater than 1,600 mg/l.

Impervious surface. Any hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from conditions pre-existing to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, driveways, parking lots or concrete or asphalt surfaces.

Improved premises. Any area which the city manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. "Improved premises" includes all impervious surfaces in public ways that are not part of the city stormwater system.

Industrial strength. Any user with a combined BOD and SS strength greater than 800 mg/l and who is engaged in manufacturing and processing activities. Such users may be required to pay a surcharge for waste loadings in excess of 200 mg/l for both BOD and SS.

Industrial waste or trade waste. Liquid wastes from industrial processes including suspended solids.

Jurisdictional wetland. Any parcel or portion of a parcel which meets the state or federal definition of wetlands that are under the jurisdiction of state or federal laws. Synonymous with "wetland."

Minor recurring activities. Repetitive construction activities that are performed as part of an overall work plan and no individual disturbance exceeds more than 500 square feet of land area and 50 cubic yards of fill or excavated material.

Mobile waste hauler. A person who, by contract or otherwise, collects wastewater, including domestic waste and septage waste, for transportation to and discharge into any portion of the city wastewater system. "Domestic waste" and "septage waste" as used herein have the meaning found in section 6.506.

Open drainage way. A natural or man-made course, ditch or channel which has the specific function of transmitting stormwater from a point of higher elevation to a point of lower elevation.

Owner. The fee owner of land including the contract purchaser of such land.

Person. An individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government, including any agency thereof.

Person responsible. The owner, agent, occupant, lessee, tenant, contract purchaser or other person having possession or control of property or the supervision of a construction project on the property.

pH. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Regional wastewater treatment service. The services provided to the city by the Metropolitan Wastewater Management Commission or its successor for the transportation, treatment and disposal of wastewater.

Related natural resources. Natural resources located within or adjacent to the city's stormwater system, such as waterways, wetlands, and riparian areas, that provide one or more of the following stormwater functions: flood control, water quality treatment, and streambank stabilization.

Residential property: medium. Property developed only with a single family dwelling with a foot print of more than 1,000 square feet but less than 3,000 square feet (including garage). Property developed only with a duplex with a total foot print of more than 2,000 square feet but less than 6,000 square feet (including garage(s)) shall be treated as two medium residential properties.

Residential property: small. Property developed only with a single family dwelling with a foot print of 1,000 square feet or less (including a garage). Property developed only with a duplex with a total foot print of 2,000 square feet or less (including garage(s)) shall be treated as two small residential properties.

Retention system. A stormwater facility which the city engineer has determined does not discharge or substantially reduces the discharge, into the city stormwater system.

Runoff control. Any measure or facility approved by the city engineer by which stormwater runoff from land surfaces on which development exists is reduced.

Sensitive areas. Those places that are highly susceptible to erosion or sedimentation.

Sewer. A pipe or a conduit for carrying wastewater or stormwater.

Sewer service. Includes wastewater service, stormwater service and regional wastewater treatment service, or any of them.

Sewerage system. The equipment, pipe line network and facilities as are needed for and are pertinent to the collection, transmission, treatment retention and disposal of wastewater or stormwater.

Single family dwelling. A building designed or used for the occupancy of one family, with housekeeping facilities for only one family. This includes each family dwelling in separate ownership even though it is attached by a common wall to one or more single family dwellings at the property line of an adjoining lot.

Stormwater. Stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater facilities. Any structure or configuration of the ground that is used or by its location becomes a place where stormwater flows or is accumulated including but not limited to pipes, sewers, curbs, gutters,

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manholes, catch basins, ponds, open drainage ways, runoff control facilities, wetlands and their appurtenances.

Stormwater service. The use of the city's stormwater system including, but not limited to, collection of stormwater discharged from property on which development exists and its deposit directly or indirectly into the city stormwater system.

Stormwater sewer. A sewer or open channel which carries stormwater into which wastewater is not intentionally admitted.

Suspended solids or SS. Solids that either float on the surface or are suspended in water, wastewater or other liquids and which are removable by laboratory filtering.

Transient rooms, motels, hotels, and student quarters. A building or portion thereof containing four or more sleeping rooms customarily occupied as a more or less temporary sleeping place for persons for which compensation is paid. "Student quarters" include but are not limited to a dwelling unit consisting of four or more rooms used for both living and sleeping purposes designed around a core kitchen and intended primarily for occupancy by unrelated individuals, whether or not the unit is occupied by students.

Wastewater. Water-carried human, animal or industrial waste together with such stormwater as may be present.

Wastewater service. The use of the city wastewater system including, but not limited to, collecting of wastewater discharged from property and its deposit directly or indirectly into the city wastewater system, or having a wastewater sewer available as provided in section 6.471 of this code and failing to connect thereto within the time prescribed.

Wastewater sewer. A sewer which carries wastewater, into which stormwater is not intentionally admitted.

Water user. Except for public water districts that purchase water at bulk rates, the owner, occupant, or other person authorized to request services or responsible for the payment therefor of any property or facility inside or outside the city using water directly or indirectly provided by the Eugene Water & Electric Board or by another water utility or district.

Wetland. Any parcel or portion of a parcel which meets state or federal definition of wetlands that are under the jurisdiction of state or federal laws. Synonymous with "jurisdictional wetland."

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(Section 6.406, formerly Section 6.405, added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; portions of former 6.405 incorporated and amended by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; Ordinance No. 22052, enacted June 24, 1996, effective July 24, 1996; Ordinance No. 20067, enacted October 16, 1996, effective November 15, 1996; Ordinance No. 20177, enacted November 8, 1999, effective December 8, 1999; Ordinance No. 20301, enacted November 10, 2003, effective December 10, 2003; and Ordinance No. 20385, enacted May 29, 2007, effective June 30, 2007.)

6.411 Ratemaking.

(1) Ratemaking procedure.

- (a) Investigation of proposed charges. Before proposing to impose or amend a charge for wastewater service, stormwater service or for regional wastewater treatment service, the city manager shall conduct an investigation of the revenue needs of the city in conducting these operations. Based on that investigation, and using the criteria set out in subsection 6.411(2), the city manager shall develop proposed charges for these services.
- (b) Notice. Prior to the imposition of any charge for wastewater service, stormwater service or regional wastewater treatment service, the city manager shall give notice of the proposed rate or charge by:
 - 1. Making copies of the notice of intended charges available to the news media, to any person who has requested such notice, to the mayor and city councilors, and to interested governmental agencies (including the United States Environmental Protection Agency, the Department of Environmental Quality, the Metropolitan Wastewater Management Commission, and the Eugene Water & Electric Board).
 - 2. Publishing notice of intended charges on two separate occasions in a newspaper of general circulation within the city.
 - 3. Posting the notice at two locations at city hall.
- (c) Contents of notice. The notice of intended charges shall state the current and proposed charge, the results of the city manager's investigation, and the time, place and manner in which interested persons may present their views on the intended action.
- (d) Public hearing and opportunity to comment. No earlier than ten days after the first publication of notice of the intended charges, the city manager or the manager's designee shall conduct a public hearing on the proposed charge. The city manager shall give interested persons reasonable opportunity to submit data or views in writing on the proposed charge.

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- (e) Decision. The city manager, on the basis of his or her investigation and the comments of interested persons, shall approve, modify, or disallow the proposed charge by order. The order shall contain written findings and conclusions based on the standards set forth in subsection 6.411(2). The city manager shall mail copies of the decision to all persons who have submitted written or oral comments on the charge or who have requested a copy of the decision. The city manager shall also promptly deliver copies of the decision to the mayor and city councilors. Unless reviewed by the council, the decision is final on the eleventh day after it is rendered.
 - (f) Review of decision. At the request of the city manager or a majority of the members of the council, made within ten days of the city manager's decision, the decision, or any part thereof, shall be reviewed by the council. The council may conduct a public hearing on the proposed charge or review the order solely on the basis of the administrative record before the city manager. After this review, the council shall approve, modify or disallow the proposed charge by order. The order shall contain written findings and conclusions based on the standards set forth in subsection 6.411(2), and shall be mailed to all interested persons. The order is final on the date rendered.
- (2) Standards. Unless the city manager determines in writing that one or more of the following factors is irrelevant or inapplicable, the amount or rate of any charge for wastewater service, stormwater service or regional wastewater treatment service shall be based on the following:
- (a) The amount charged for such service in the past;
 - (b) For regional wastewater treatment services the recommendation, if any, of the Metropolitan Wastewater Management Commission, or any successor agency;
 - (c) Applicable federal or state regulations or conditions imposed as part of a federal or state grant or financial assistance agreement;
 - (d) The amounts charged or proposed to be charged by the city of Springfield and other providers of stormwater or wastewater services for comparable services;
 - (e) The revenue needed to pay for the direct and indirect expected costs of constructing, operating, maintaining, and replacing local and regional sewerage facilities based on the adopted budgets of the city of Eugene and the Metropolitan Wastewater Management Commission or its successor, the debt obligations of the city or other entities for construction of the facilities, adopted capital improvement plans of the council, the expected need for financial reserves and contingencies, and other sources of revenue;
 - (f) For an individual stormwater service customer that discharges stormwater that requires extraordinary expense to the city, special

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- surcharge rates based on the type, concentration, quantity, quality and frequency of the discharge.
- (g) Other relevant adopted policies of the council;
 - (h) The terms of any applicable intergovernmental agreement relating to wastewater or stormwater services or regional wastewater treatment service;
 - (i) The obtaining of equity between different classes of customers so that one class of customers does not pay more than its proportionate share of the expenses of providing sewer service; and
 - (j) In addition to the forgoing considerations, in determining the amounts or rates to be charged for stormwater and wastewater service, the city manager shall consider the value of the use and occupancy of the city's right-of-way by the city stormwater system and city wastewater system.
- (3) If the city manager determines that one or more of the factors listed in subsection (2) of this section is irrelevant or inapplicable, the manager shall notify the mayor and council of that determination.
- (4) Limitations. The following limitations apply to charges set by the city manager for wastewater service, stormwater service and regional wastewater treatment service:
- (a) Charges shall be imposed on a monthly basis. Each customer shall be notified, in at least one annual billing for the service, of the rate or the amount of the charge and the allocation of revenue expected from application of the charge.
 - (b) The charges for regional wastewater treatment service shall distinguish between the following classes of customers: single dwelling units, duplexes, and general wastewater customer use based on loading strengths.
 - (c) The charges for local wastewater service may, but need not, distinguish between classes of customers.
 - (d) The monthly charge for wastewater service and regional wastewater treatment service shall be a fixed fee together with a fee based on volume of use of water (partial flow-based rate).
 - (e) When the wastewater service rate is based on volume, the volume shall be calculated by actual measurement of the wastewater discharged (the costs of measurement to be borne by the customer) or by an estimate based on the wastewater customer's average monthly water consumption during the previous December through April period, or, if no water consumption figures are available for at least three full months during this period, the consumption of other similar customers (for residential customers) or actual monthly water consumption (for non-residential customers).
 - (f) The charges for stormwater service shall distinguish between the following classes of customers: small residential, medium residential and general stormwater customer, based upon the actual number of equivalent service units for each developed property or an average number of equivalent service units for a

specific class. Special surcharges for stormwater service customers who receive extraordinary service shall be in addition to the standard charges for the customer's classification.

(Section 6.411, formerly Section 7.020, amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 18719, enacted November 5, 1980; Ordinance No. 19096, enacted February 16, 1983; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; Ordinance No. 19482, enacted June 10, 1987; Ordinance No. 19613, enacted May 24, 1989; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 20385 and Ordinance No 20386, enacted May 29, 2007, effective June 30, 2007; and amended by Ordinance No. 20432, enacted April 27, 2009, effective May 29, 2009.)

6.416 Charges - Adjustments.

- (1)** Any person seeking a modification to a charge imposed on that customer for stormwater, wastewater, or regional wastewater treatment service shall seek an informal resolution of the issue with the city. If no agreement is reached, the customer may apply to the city manager for a modification of the charge, and, if applicable, a credit for any excessive charges paid during all or part of the 12 months preceding the application. The application shall be on a form provided by the city and shall be accompanied by the fee set by the city manager under section 2.020 of this code. The city manager or the manager's designee shall approve or deny the application using the procedures and criteria set forth in this section.
- (2)** The monthly wastewater service charge shall be reduced, and the appropriate credit given, if the customer shows that:
 - (a) Actual water consumption exceeds the amount of water discharged into the wastewater system; or,
 - (b) An error has been made in determining the loading strength of the customer's effluent for purposes of calculating the applicable regional wastewater treatment rate. Customer proof must include reliable BOD and SS test data from a qualified wastewater testing laboratory and/or test samples by the city or the regional sewerage agency.
- (3)** Any stormwater service charge shall be reduced or eliminated, and the appropriate credit given, if the customer shows to the city engineer's satisfaction one or more of the following:
 - (a) the amount of permanent reduction to the runoff from the property;
 - (b) the amount of stormwater being discharged directly from the property into the Willamette or McKenzie Rivers or other body of water that does not drain directly or indirectly use the city stormwater system;
 - (c) the calculation of the number of ESUs assigned to the customer's property was in error;
 - (d) When the stormwater service charge has been surcharged because of the quality of the stormwater being discharged, the

amount of permanent improvement in the water quality for the property due to mitigation measures implemented on the property to treat the stormwater before it is discharged into the city stormwater system.

- (4) Except when the City Engineer determines that the impact of further development upon the existing charges is less than the cost of processing a re-application, any modification given under this section shall continue until the property is further developed or until the city engineer determines the property no longer qualifies for the modification given. Upon further development of the property another application may be made by a person responsible. If the city engineer determines the property no longer qualifies for the modification, written notice of that determination shall be given to the person responsible. The city engineer's determination, may be appealed as provided in section 2.021 of this code. A copy of the decision on appeal shall be mailed to the applicant, parties who have requested a copy, and, if a reduction or elimination is ordered, to the billing agency.

(Section 6.416, formerly Section 7.023 added by Ordinance No. 18708, enacted September 22, 1980; amended by ordinance No. 19096, enacted February 19, 1983; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; Ordinance No. 19613, enacted May 24, 1989; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.421 **Charges - Collection and Payment.** The Eugene Water & Electric Board is directed to collect the charges provided for in sections 6.401 through 6.610. Charges levied pursuant to sections 6.401 through 6.610 shall be determined by the city manager or his/her designee and certified to the Eugene Water & Electric Board and any other water utility obligated to collect such charges. Revenue collected by the Eugene Water & Electric Board shall be paid monthly to the city and shall be deposited in the appropriate fund for wastewater operations or for stormwater operations for use in providing sewer service including debt service and such other services as the council may direct, except that revenue collected based on the criteria contained in subsection (2)(j) of section 6.411 of this code shall be deposited in the appropriate fund for road operations to be used for the reconstruction, repair, maintenance, operation, and preservation of city-owned roads and streets within the city, roads and streets which the city is contractually or legally obligated to operate and maintain, or roads and streets for which the city has accepted responsibility under intergovernmental agreement. Revenue collected based on the criteria contained in subsection (2)(j) of section 6.411 of this code may not be used for capacity-enhancing street improvements.

(Section 6.421, formerly Section 7.025 amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985, Ordinance No. 19613, enacted May 24, 1989; Ordinance No. 19651, enacted November 20, 1989; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 20432, enacted April 27, 2009, effective May 29, 2009.)

6.426 **Charges - Delinquencies.** The water utility providing service to the sewer service customer shall enforce the collection of rates and charges for sewer service and may do so by withholding delivery of water, steam or electricity to the delinquent customer, or by any other means of collection provided by the laws of the state or permitted by the charter and ordinances of the city. Sewer service charges shall be collected monthly and if not paid on or before 10 days from and after the date the same shall be payable, the charges shall be deemed to be delinquent. Any charge due which shall not be paid when due may be recovered in an action at law by the city.

(Section 6.426, formerly Section 7.035 amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.431 **Charges - Penalty for Nonpayment.** In the event a customer becomes delinquent in the payment of sewer service charges, there shall be added to the charges a penalty in the amount of 10 percent of the delinquency and the total amount due shall bear interest at the rate established in section 2.022 of this Code from the date of the delinquency.

(Section 6.431, formerly Section 7.070 amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985, and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.436 **Charges - Cost of Collection.** The water utility collecting the sewer service charges may withhold from payments received a reasonable fee for its actual costs of billing, collecting and remitting sewer service revenue. The fee shall be based on actual costs and established annually by agreement between the city manager and the water utility.

(Section 6.436, formerly Section 7.045 added by Ordinance No. 19096, enacted February 16, 1983; amended by Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.441 **Premises Located Outside City - Connection Prohibited.** No person shall connect premises located outside the city limits to the city wastewater system or to the city stormwater system until:

- (a) An application therefor has been submitted and a permit issued in accordance with the provisions of section 2.212 of this code;
- (b) The property which is to be connected to the sewer
 1. has been assessed for the sewer to which connection is to be made, or
 2. is included within a local improvement district for the sewer to which connection is proposed; or
- (c) The city engineer has determined, consistent with council policy, the property is to be connected to the city wastewater system or the city stormwater system available to serve the property.

(Section 6.441, formerly Section 7.050, amended by Ordinance No. 17492, enacted December 22, 1975; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.446 Discharge of Foreign Matter - Preventative Devices.

- (1)** No person responsible shall allow wastewater or poisonous substance from his or her premises to flow out on or under a public way or on any adjoining lot or grounds.
- (2)** No person responsible shall place or cause to be placed a substance which is harmful to or has a tendency to clog the city sewer or permit such substance in the control of such person to enter the city sewer.
- (3)** No person shall discharge, or cause to be discharged, into the city stormwater system any substance other than stormwater, except discharges resulting from fire fighting activities, or discharges authorized by written approval of the city manager or the manager's designee. The city manager may deny approval to discharge into the city stormwater system if the discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law. The city manager may withdraw approval to discharge if the manager determines that a discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law. Any person lawfully discharging pursuant to a National Pollutant Discharge Elimination System permit as of July 24, 1996 shall be deemed to have received written approval from the city manager. Such approval may be withdrawn if the manager determines that the discharge poses a threat to health, safety, public welfare, or the environment, or is otherwise prohibited by law. The city manager may adopt rules pursuant to section 2.019 of this code to define specific circumstances or criteria for a determination that a discharge poses a threat to health, safety, public welfare, or the environment.
- (4)** Every establishment or place where the substances prohibited in subsection (2) above is or may be produced is hereby required to install such necessary catch basin traps or other devices for the purpose of preventing such substance from entering a city sewer. It shall be the responsibility of the individual violating this provision to furnish the city upon request, plans prepared by a registered engineer showing the proposed method of elimination. Such device shall be approved only if tests and subsequent engineering data establish that a desirable standard of removal is produced.
- (5)** No person responsible shall allow stormwater to flow out on or under a public way in a manner that creates a hazard for those lawfully using the public way or that creates a hazard to improvements within the public way.
- (6)** The conditions prohibited by this section are nuisances and subject to abatement as provided in this code.

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(Section 6.446, formerly Section 7.070, amended by Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20052, enacted June 24, 1996, effective July 24, 1996.)

6.451 **Administrative Regulations and Methodology**. The city manager may adopt such rules, regulations and methodologies as are necessary for the administration of the duties required by sections 6.401 through 6.610 as provided in section 2.019.

(Section 6.451 added by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

Wastewater Service

6.461 Wastewater Service Charges. All water users shall pay the charges for wastewater service and regional wastewater treatment service that are enacted under this section. All mobile waste haulers shall pay the service charges for disposal of wastes that are enacted under this section. The city manager shall review and determine the monthly charges for regional wastewater treatment service and local wastewater service on at least an annual basis. The city manager shall set these charges using the procedures, criteria and limitations set out in section 6.411. Mobile waste hauling fees shall be determined using the procedure and criteria set out in section 6.411.

(Section 6.461 added by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.466 Wastewater Service Charges - Customers Not Served by Eugene Water & Electric Board. Water users not served by the Eugene Water & Electric Board shall install and maintain meters approved by the city manager or his/her designee which accurately reflect the gallons of water consumed or which pass into the city wastewater system. The meter shall be conveniently available to be read by the city.

(Section 6.466, formerly 7.030 amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.471 Wastewater System and Sewage Disposal Regulations - Connections Required.

- (1)** Except as provided in subsections 6.471(3) and 6.471(4), within the city or within a local improvement district for wastewater sewers created by the council, all structures in which plumbing fixtures are installed or which discharge wastewater and are located within 160 feet of the city wastewater system or of a public right-of-way containing the city wastewater system shall be connected to the city wastewater system in a manner prescribed by this code and shall discharge all wastewater into such system.
- (2)** No private sewage disposal system shall be allowed within the city unless the requirement in subsection (1) above cannot be met and approval and a permit is obtained from the Lane County Health Department.
- (3)** When a structure has been serviced by an approved private sewage disposal system and the city wastewater system becomes available as described in subsection 6.471(1), the city may allow an 18 month grace period from the date the property owner or person in charge of property receives actual notice of the city's wastewater system's availability within which to connect the structure to the city wastewater system. If allowed, the 18 month grace period terminates when work is done on

the affected property that requires a plumbing permit or when conditions exist on the affected property which are described in subpart 6.010(g) or section 6.446.

- (4) Except for actions enforcing subpart 6.010(g) or section 6.446, at least 90 days before initiating legal action alleging a violation of section 6.471(1) the property owner or person in charge of property shall be sent written notice advising that legal proceedings will be filed against them for violation of section 6.471 if they have not completed the required sewer connection within 90 days.
- (5) The notice required by subsection 6.471(4) shall be delivered by personal service or sent by certified mail to the property owner or person in charge of property and shall describe the premises required to be connected to the city wastewater system, the date after which legal proceedings may be initiated for violation of section 6.471, and the city office where information and required permits may be obtained. A copy of the notice shall be sent by first class mail to the occupant of the property if other than those receiving the required notice.
- (6) No person shall sever a sewer connection or disconnect without first obtaining permission from the responsible city official.
- (7) The conditions prohibited by this section are nuisances and subject to abatement as provided in this code.

(Section 6.471, formerly Section 6.070 amended by Ordinance No. 18708 enacted September 22, 1980; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19790, enacted June 24, 1991; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.476 Property Served by Existing Wastewater Sewers - Equivalent Assessment.

- (1) The owners of all real property lying within 160 feet of a city wastewater sewer, which can be served by an already installed city sewer line and which has not paid a local improvement assessment for the wastewater sewer to which connection is to be made shall pay to the finance officer an equivalent assessment and any other fees required by the city before connecting to the wastewater sewer. If the property has delinquent local improvement assessments against it, before issuing the sewer connection permit, all delinquent assessments shall be brought current. The equivalent assessment shall be determined by the city engineer, taking into account the city policy that each parcel of real property shall pay at least for an eight inch lateral sewer system, based on the greater of the cost of constructing the wastewater sewer to which connection is proposed or the cost at the time of connection of local improvement assessments for similar wastewater sewers. As used in this subsection "cost" includes the expenses identified in section 7.170. The total equivalent assessment shall be reduced by any principal payment received on a local improvement assessment levied against the property for a wastewater sewer. Within ten days of that

determination any person aggrieved by the city engineer's determination may submit a written request for a hearing by the city manager or the manager's designee using the applicable procedures set forth at section 2.021 of this code. The determination on the appeal shall be in writing and shall be issued within 10 days of the hearing. On the date of issuance, a copy of the decision shall be mailed to the appellant, the city engineer and other parties who have requested a copy. The decision of the city manager or the manager's designee shall be final.

- (2) The city may accept and incorporate all or part of the wastewater system of a special service district as a part of the city's wastewater system. After such acceptance, the city may establish special assessment and connection fees in the manner provided by law.
- (3) In lieu of paying the equivalent assessment at the time of connection, the owner of the real property to be connected to the wastewater sewer may execute and deliver to the finance officer an agreement to pay the equivalent assessment in installments. The finance officer may accept the owner's agreement to pay only if it is consistent with the limits established under subsection 7.160(2) and (3). Equivalent assessments paid as provided in this subsection shall be charged interest on the unpaid principal balance as provided in section 2.022 of this code and are hereby declared a lien against the real property and shall be docketed in the lien docket of the city and may be foreclosed in the same manner as other assessment liens.
- (4) The equivalent assessment required by this section shall be used for wastewater purposes and shall be in addition to all other fees and assessments required by this code.

(Section 6.476, formerly Section 7.055 amended by Ordinance No. 17630, enacted April 26, 12976; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 20301, enacted November 10, 2003, effective December 10, 2003.)

6.481 **Method of Paying Cost and Expense of Wastewater Sewers.** Except when council policy directs otherwise or when limited because of the availability of funds, the cost of constructing all general or trunk wastewater sewers in excess of a normal eight-inch lateral and the cost of maintaining, repairing and reconstructing the city wastewater system shall be paid from wastewater service revenues whether derived from customer charges, fees, taxes, assessments or otherwise, or from the proceeds of bonds issued and sold for that purpose.

(Section 6.481, formerly Section 7.060 amended by ordinance No. 19651, enacted November 20, 1989; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

Industrial Pretreatment Program

6.501 Industrial Pretreatment Program - Declaration of Policy.

- (1) The provisions of sections 6.501 to 6.596 of this code set forth requirements for the industrial discharge of pollutants into the city wastewater system. The objectives of these sections are to:
 - (a) Prevent the discharge of pollutants into the city wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
 - (b) Prevent the discharge of pollutants into the city sewerage system which will pass through the system, inadequately treated, into receiving waters;
 - (c) Improve the opportunity to recycle and reclaim wastewater and sludge from the city wastewater system;
 - (d) Protect the health of the city's employees working in and around the city wastewater system.
- (2) In achieving the objectives of sections 6.501 to 6.596 of this code it shall be the policy of the city to actively support the community's commerce and industry through accommodation, assistance and cooperation consistent with the city's responsibility to protect the waters of the state from pollution and to secure the health, safety and welfare of the residents of the metropolitan area.
- (3) Pollutants shall be accepted into the city wastewater system subject to regulations and requirements as may be promulgated by state and federal regulatory agencies or the city for the protection of sewerage facilities and treatment processes, public health and safety, receiving water quality and avoidance of nuisance. Pretreatment standards shall be developed to ensure that, at a minimum, the city and industrial users comply with Sections 307(b) and 307(c) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the regulations promulgated pursuant to these sections of the Act, including but not limited to, 40 CFR Part 403 (General Pretreatment Regulations) and 40 CFR Chapter I Subchapter N (National Categorical Pretreatment Standards).
- (4) The city manager, in carrying out the provisions of sections 6.501 to 6.596 of this code regarding industrial discharge of pollutants by industrial users into the city wastewater system necessary for the proper disposal of wastewater and stormwater from the city and adjacent territory, is authorized, in his or her administrative discretion, to adopt and to promulgate as regulations any laws of the state or the federal government in accordance with the procedures of section 2.019 of this code. Discharge permit conditions shall be predicated on federal, state and local regulations and requirements and on the results of analysis of the type, concentration, quantity and frequency of discharge including the geographical relationship of the point of

discharge to sewerage and treatment facilities. Discharge permits may include, but shall not be limited to, conditions pertaining to discharge standards, self monitoring requirements, treatment methods, housekeeping practices, inventory storage, manufacturing methods, etc., that are intended to protect the waters of the state. Permit conditions shall be reevaluated upon expiration of the permit and may be revised by the city manager as required, to remain consistent with local, state or federal laws, regulations and requirements or to meet any emergency.

- (5) The city manager shall administer, implement, and enforce the provisions of sections 6.501 to 6.596 of this code to ensure that the city's pretreatment program complies with the objectives of sections 6.501 to 6.596 of this code, the applicable state and federal laws and regulations and the city's policy to cooperate with the state and federal government. Cross references in sections 6.501 to 6.596 of this code to other statutes and regulations are to the versions thereof in effect on the effective date of this ordinance.

(Section 6.501, formerly Section 6.400 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20075, enacted January 27, 1997, effective February 26, 1997.)

6.506 Industrial Pretreatment Program - Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in sections 6.501 to 6.596 of this code shall have the following meanings:

Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251, et seq.

Authorized representative of industrial user. An authorized representative of an industrial user shall be:

- (a) A president, vice-president, secretary or treasurer in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, if the industrial user is a corporation.
- (b) A general partner or proprietor if the industrial user is a partnership or sole proprietorship, respectively; or
- (c) A duly authorized representative of the individual designated in (a) or (b) provided the authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the discharge originates or a position of equivalent responsibility or having overall responsibility for environmental matters for the company, is made in writing by an individual designated in (a) or (b) and such authorization is provided to the city prior to or together with any reports

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signed by an authorized representative as provided in 40 CFR 403.12(1) or required by the city manager.

BOD (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 Celsius expressed in milligrams per liter.

CFR. The referenced Code of Federal Regulations provision.

City manager. The city manager of the city of Eugene, or the city manager's designee.

City wastewater system. A treatment works as defined by section 212 of the Act. This definition includes any publicly owned sewer that convey wastewater to the treatment plant, whether or not a part of the regional sewerage facilities as defined in the Intergovernmental Agreement executed by the cities of Eugene and Springfield and Lane County as of February 9, 1977, as amended (Intergovernmental Agreement), but does not include the city stormwater system.

Constituent. Any pollutant regulated by section 6.501 to 6.596 of this code or by any permit issued pursuant to section 6.551 of this code, or any volume discharge limits established by a permit issued pursuant to section 6.551 of this code.

Cooling water. The water discharged from any use to which the only pollutant added is heat.

DEQ. The Oregon Department of Environmental Quality.

Discharge. The deposit of pollutants into the city wastewater system, whether deliberate or as an unintended result of any action or failure to act.

Discharge permit. A wastewater discharge permit or a mobile waste hauler permit.

Domestic waste. Wastewater derived from ordinary living processes, free from process wastewater and which will permit satisfactory disposal without special treatment into the city wastewater system.

EPA. The United States Environmental Protection Agency.

Immediate or Immediately. Immediate or immediately means as soon as reasonably possible but in no event longer than 24 hours.

Industrial user. Any person, including a mobile waste hauler, who discharges wastewater from a source other than a single or multiple dwelling unit directly connected to the city wastewater system.

Interference. A discharge which, alone or in conjunction with a discharge or discharges from other sources, either:

- (a) Inhibits or disrupts the city, its wastewater system treatment processes or operations, or its sludge processes, use or disposal; or
- (b) Is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations); Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act or regulations promulgated by the city manager.

Mobile waste hauler. A person who, by contract or otherwise, collects wastewater, including domestic waste and septage waste, for transportation to and discharge into any portion of the city wastewater system. "Domestic waste" and "septage waste" as used herein have the meaning found in section 6.506.

Mobile waste hauler permit. A permit issued pursuant to section 6.551 of this code.

NPDES permit. National Pollution Discharge Elimination System permit issued pursuant to ORS 468.740 and the Act.

New significant industrial user. Any person discharging from any building, structure, facility or installation (source), the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

- (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (c) The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an

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existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (b) or (c) of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (d) Begun, or caused to begin as part of a continuous on-site construction program:
 - 1. Any placement, assembly, or installation of facilities or equipment; or
 - 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (e) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Pass through. A discharge which exits the city wastewater system into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city wastewater system NPDES permit (including an increase in the magnitude or duration of a violation).

Person. Any individual, partnership, joint-venture, firm, company, cooperative, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity. The masculine gender shall include the feminine and the singular shall include the plural.

pH. The logarithm (base 10) of the reciprocal of the hydrogen ion activity expressed in moles per liter of solution.

Pollutant. Any element or compound discharged into the city wastewater system except water unless the water has been heated, cooled or irradiated.

Pollution. The alteration of the chemical, physical, biological or radiological state of water.

Pollution management practices. Schedules of activities, requirements or prohibitions of practices, operating procedures, maintenance procedures, and other management procedures used to reduce the amount of pollutants entering the city wastewater system.

Pollution prevention. Source reduction and other practices that reduce or eliminate the creation of pollutants through:

- (a) Increased efficiency in the use of raw materials, energy, water, or other resources, or
- (b) Protection of natural resources by conservation.

Pretreatment. The reduction or elimination of pollutants in wastewater prior to discharge.

Process wastewater. Water which, during manufacturing or processing, comes into contact with or results from the production of or use of any raw material, intermediate product, finished product, byproduct or waste product.

Restricted substance. Pollutants listed in section 6.511 of this code, or as prescribed by the city manager pursuant to section 6.516 of this code.

Sample. Any portion of wastewater representing a discharge, which may be a grab sample, or a composite of several samples representing the sewer discharge over a period of time.

Septage waste. Domestic waste extracted from a sewage containment system.

SIC number. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, through the effective date of this ordinance.

Significant industrial user. Any industrial user which:

- (a) Is subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N or rules promulgated by the city manager, or
- (b) Discharges an average of at least 25,000 gallons per day of wastewater (excluding domestic waste, boiler blowdown, and noncontact cooling water) in any period of 12 consecutive calendar months, or
- (c) Discharges process wastewater, which on any day in any period of 12 consecutive calendar months constitutes at least five percent of the average daily dry weather hydraulic or organic capacity of the city wastewater system, or

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- (d) Is determined by the city manager to have a reasonable potential for adversely affecting the city wastewater system's operation or for violating any pretreatment standards.

Slugload. Any discharge of a non-routine episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

Standards. The limitations and requirements established by federal, state and local laws and regulations for discharges to the city wastewater system.

Suspended solids. The total elements and compounds which float on the surface of, or are suspended in, wastewater and which are removable by laboratory filtration.

Toxic pollutant. Any pollutant or combination of pollutants identified pursuant to section 307(a) and section 502 of the Act or otherwise listed as toxic in regulations previously promulgated by the EPA, or as identified by the city manager.

Wastewater. Liquid or water-carried pollutants including any stormwater that may be present, whether treated or untreated, which is discharged, flows, or infiltrates into the city wastewater system.

Wastewater discharge permit. A permit issued pursuant to section 6.551 of this code.

(Section 6.506, formerly Section 6.405 added by Ordinance No. 19130, enacted April 13, 1983; and amended by Ordinance No. 19791, enacted July 8, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20075, enacted January 27, 1997, effective February 26, 1997.)

6.511 Industrial Pretreatment Program - General Discharge Prohibitions. No industrial user shall discharge any pollutant in a quantity which will harm the health of the city's employees working in and around the city wastewater system, interfere with the operation or performance of the city wastewater system, or contaminate the resulting sludge, or will pass through the system inadequately treated, into receiving waters, including but not limited to any of the following substances:

- (a) Any liquids, solids or gases which by reason of their nature or quantity are, or may be sufficient either alone or in combination with other pollutants to cause fire or explosion or be injurious in any other way to the city wastewater system or its operations, including, but not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, prechlorates, bromates, carbides, hydrides and sulfides; wastestreams with a closed

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cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified by the city manager. At no time shall two successive readings on an explosion hazard meter, at the point of discharge (or at any point in the city wastewater system) be more than five percent nor any single reading over ten percent of the lower explosive limit of the meter.

- (b)** Pollutants which result in the presence of toxic gases, vapors, or fumes within the city wastewater system in a quantity that may cause acute worker health and safety problems.
- (c)** Any trucked or hauled pollutants, except at discharge points designated by the city manager.
- (d)** Solid or viscous substances which either alone or in combination with other pollutants may cause obstruction to the flow in a sewer or other interference with the operation of the city wastewater system such as, but not limited to: grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains or hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (e)** Any wastewater having a pH less than 5.5 or greater than 12.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the city wastewater system.
- (f)** Any wastewater containing pollutants which, either alone or in combination with other pollutants, may injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, creates a toxic effect in the receiving waters of the city wastewater system or exceeds any limitation set forth in a National Categorical Pretreatment Standard or any other pretreatment standard.
- (g)** Any noxious or malodorous liquid, gas or solid which, either alone or in combination with other pollutants, is sufficient to create a public nuisance or hazard to life or is sufficient to prevent entry into the city wastewater system for maintenance or repair.
- (h)** Any pollutant which may cause the city wastewater system's effluent or any other product of the city wastewater system such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
- (i)** Any pollutant which will cause the city to violate its NPDES permit.
- (j)** Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (k)** Any wastewater having a temperature which will inhibit biological activity in the treatment plant or stimulate excessive biological activity in the city wastewater system, but in no case wastewater with a

temperature at the point of discharge into the city wastewater system which exceeds 65 degrees C (150 degrees F) or with a temperature which exceeds 40 degrees C (104 degrees F) at the regional treatment works plant influent.

- (l) Any wastewater containing any radioactive wastes or isotopes of such half life or concentration as may exceed limits established by the city manager or applicable state or federal standards.
- (m) Any unpolluted water, including, but not limited to, non-contact cooling water, or stormwater.

(Section 6.511, formerly Section 6.410 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19406, enacted September 17, 1986; Ordinance No. 19791, enacted July 8, 1991; Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.516 Industrial Pretreatment Program - Pretreatment Standards; Restricted Substances. No industrial user shall discharge wastewater containing restricted substances into the city wastewater system, in excess of limitations specified by conditions of its discharge permit or published by the city manager. The city manager shall publish and revise from time to time rules which designate and establish limits for restricted substances. At all times these rules shall cover and be at least as strict as those for pollutants as defined in state or federal regulations. Discharge limits or rules in effect and incorporated into any discharge permit shall remain in effect for that permit until it expires, except as modified as provided in section 6.551 of this code.

(Section 6.516, formerly Section 6.415 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.521 Industrial Pretreatment Program - Excessive Discharge. No industrial user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with the standards contained in sections 6.501 to 6.596 of this code.

(Section 6.521, formerly Section 6.425 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.526 Industrial Pretreatment Program - Accidental Discharges. Industrial users shall provide protection from accidental discharge of prohibited or regulated materials or substances established in this section. Where deemed necessary by the city, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the industrial user's cost and expense. An accidental spill prevention plan (ASPP) showing

facilities and operating procedures to provide this protection shall be submitted to the city for review and approval before implementation. The city shall determine which industrial user is required to develop an ASPP and require that industrial user to submit the ASPP within 60 days after notification by the city. Each industrial user shall implement its ASPP as submitted after such ASPP has been reviewed and approved by the city. Review and approval of such plans and operating procedures by the city shall not relieve the industrial user from the responsibility to modify its facility as necessary to meet the requirements of sections 6.501 to 6.596 of this code.

(Section 6.526, formerly Section 6.427 added by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.531 Industrial Pretreatment Program - Notice of Discharges.

- (1) Telephone notice.** Any industrial user or employee thereof becoming aware of a discharge which:

 - (a) Could cause interference or pass through, including any slug load; or
 - (b) Violates sections 6.501 to 6.596 of this code, shall report such discharge immediately by telephone to the city manager. Prompt notification of such discharges will allow the city to take necessary precautions to minimize hazards and to prevent damage to the receiving waters, thereby avoiding or minimizing discharge violations and fines from state and federal regulatory agencies and the city. The notification shall include the location of the discharge, type, concentration and volume of pollutant discharged and corrective actions proposed and/or taken.
- (2) Written notice.** Within five days following such a discharge, the industrial user shall submit to the city manager a detailed written report describing the cause and location of the discharge, the type, concentration and volume of pollutant discharged, and any hazards which may be posed to life or property and the measures taken or to be taken to prevent similar future occurrences.
- (3) Advance notice.** An industrial user shall promptly notify the city manager in advance of any substantial change in the volume or character of pollutants in its discharge, including hazardous wastes for which the industrial user has provided initial notification under section 6.536 of this code.
- (4) Notice to employees.** Each industrial user subject to section 6.551 of this code shall permanently post a notice on its bulletin board or other prominent place advising employees whom to call in the event of a discharge covered by subsection (1) of this section. Employers shall ensure that all employees who may cause or suffer such a discharge to

occur or who are likely to detect such discharge are advised of the emergency notification procedure.

(Section 6.531, formerly Section 6.430 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.536 Industrial Pretreatment Program - Notice of Hazardous Waste Discharge.

- (1) Local notice and prior approval. Prior to the discharge of any substance referenced in subsection (2) of this section, the industrial user shall obtain prior written approval from the city manager for such discharge. The written request for prior approval shall include the name of the hazardous waste as set forth in 40 CFR Part 261, identification of the hazardous constituents contained in the waste, an estimate of the mass and concentration of such constituents, the volume of the discharge, and any other information the city manager may deem appropriate.
- (2) Federal notice requirements. Industrial users shall notify the city manager, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the city wastewater system of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the city wastewater system, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user:
 - (a) An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month; and
 - (b) An estimation of the mass constituents in the wastestream discharged during that calendar month; and
 - (c) An estimation of the mass constituents in the wastestream expected to be discharged during the following 12 months. Industrial users who commence discharging after December 31, 1991 shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notification of changed discharges must be submitted under section 6.430(3) of this code. The notification requirement in this section does not

apply to pollutants already reported under self-monitoring requirements of this code.

- (3) Exemption. Industrial users are exempt from the requirements of subsection (2) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of hazardous wastes as specified in 40 CFR 261.30 (d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
- (4) New regulations. In the case of any new regulations under section 3001 of the Resource Conservation and Recover Act identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the city manager, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (5) Certification. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(Section 6.536, formerly Section 6.432 added by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.541 Industrial Pretreatment Program - Agreements. Nothing contained in sections 6.501 to 6.521 of this code shall be construed to prohibit an agreement between the city and any person whereby a discharge which would otherwise be prohibited by sections 6.501 to 6.596 of this code may be admitted to the city wastewater system. Such an agreement may be made when, in the opinion of the city manager, special circumstances justify such agreement, provided that no interference or pass through results from the discharge and no additional costs are incurred by the city without recompense by the person. Categorical pretreatment standards shall not be waived by special agreement of the parties.

(Section 6.541, formerly Section 6.434 added by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.546 Industrial Pretreatment Program - Fees.

- (1) Purpose. It is the purpose of this section to reduce the city's cost of implementation of the pretreatment program through a system of

equitable charges or fees to be paid by the industrial users of the city wastewater system who are subject to section 6.551(1)(a) of this code for certain services. The applicable charges or fees shall be set forth in a schedule of fees established as provided in section 2.020 of this code.

- (2) Fees. When adopting fees as provided in subsection (1) of this section the city manager may adopt fees to reduce the city's cost of providing the following services:
- (a) Setting up and operating the pretreatment program;
 - (b) Sampling, monitoring, inspections and surveillance procedures;
 - (c) Reviewing accidental discharge procedures and control;
 - (d) Reviewing and acting upon permit applications; and
 - (e) Other services as the city manager may deem necessary to carry out the requirements contained in sections 6.501 to 6.596 of this code.

(Section 6.546, formerly Section 6.435, added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.551 Industrial Pretreatment Program - Administration.

(1) General.

- (a) Wastewater discharge survey. The city manager or designee may require an industrial user to provide information pertaining to the nature and quantity of the industrial user's wastewater discharge. The city manager may, from time to time, require an industrial user to complete a wastewater discharge survey and returned it to the city.
- (b) Monitoring facilities. When required by the city manager, the industrial user shall install and maintain at its expense a suitable control accesshole to facilitate observation, sampling and measurement of wastewater being discharged. Such accesshole shall be located, if feasible, where it is accessible from a public road or street. It shall be constructed in accordance with plans and at a location approved by the city manager and shall be arranged so that flow measuring and sampling equipment and a shutoff gate or a screen may be conveniently installed by the city.
- (c) Inspection and sampling. The city may inspect the facilities of any industrial user as often as deemed necessary (significant industrial users should expect to be inspected no less often than at least one to four times annually) to ascertain whether the provisions of sections 6.501 to 6.596 of this code are being complied with. The owner, operator or agent in charge of the premises shall allow authorized representatives of the city, state and EPA access at all reasonable times to all parts of the

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- premises where wastewater related facilities are located or in which records required by this code are kept for the purpose of the performance of any of their duties, including but not limited to, inspection, observation, photographing, sampling, and/or records copying and examination. The city, state and EPA shall have the right to set up on the industrial user's property such devices as may be necessary or proper to conduct sampling, observation, inspection, compliance monitoring and/or metering operations. The industrial user shall make arrangements with its employees so that upon presentation of their credentials, representatives from the city, state or EPA will be permitted to enter, without delay, for the purpose of performing their responsibilities.
- (d) Pretreatment facilities. An industrial user may be required to install pretreatment facilities or make plant or process modifications or implement pollution management practices as deemed necessary by the city manager to meet the requirements of sections 6.501 to 6.596 of this code. Whenever such facilities or modifications are required, they shall be constructed, installed, operated and maintained at the expense of the industrial user and in a manner and within the time prescribed by the city manager to enable the city to comply with all state and federal regulations or to protect the city wastewater system or treatment process. The industrial user shall maintain records indicating routine maintenance check dates, cleaning and waste removal dates and means of disposal of accumulated wastes. Such records shall be retained for a minimum of three years and shall be subject to review in accordance with subsection (1)(a) of this section. Approval of proposed facilities or modifications by the city manager will not in any way guarantee that these facilities or modifications will function in the required manner or attain the required results, nor shall it relieve an industrial user of the responsibility of enlarging or otherwise modifying or replacing such facilities to accomplish the intended purpose and to meet the applicable standards, limitations and conditions of sections 6.501 to 6.596 of this code and, in the case of a permit holder, the wastewater discharge permit.
- (e) Confidential information. Information and data obtained by the city from reports, questionnaires, permit applications, permits and monitoring programs shall be available to the public and other governmental agencies without restriction unless the industrial user requests in writing that it be confidential and demonstrates to the satisfaction of the city manager that such records are exempt from disclosure under the Oregon Public Records Law, ORS 192.410, et seq. Notwithstanding anything herein to the contrary, all such data shall be available at least to the extent necessary, to permit the city manager to ensure compliance with sections 6.501

to 6.596 of this code as well as the requirements of 40 CFR section 2.302. When confidentiality is requested and the right thereto is established by the industrial user, the confidential information shall not be made available for inspection by the public but may be made available upon written request to governmental agencies for uses related to sections 6.501 to 6.596 of this code, the NPDES permit, or pretreatment programs. However, all portions of a report shall be available for use by the city, state or any state agency or federal agency in judicial or enforcement proceedings involving the person furnishing the report.

(2) Wastewater discharge permits.

- (a) General. Every significant industrial user shall secure a wastewater discharge permit from the city. Any discharge by a significant industrial user without a wastewater discharge permit is a violation of this code except as provided in subparagraph (b) of this subsection.
- (b) Application. An existing industrial user which will become a significant industrial user upon establishing a new point of discharge, or making a substantial change in the volume or character of its discharge or process, shall apply for a wastewater discharge permit at least 90 days prior to establishing a new discharge point or making such change in discharge or process. Any such action by the industrial user without a permit is a violation of sections 6.501 to 6.596 of this code. Any other existing industrial users shall apply for a wastewater discharge permit within seven days of becoming a significant industrial user and may continue to discharge until the earlier of, the denial of the application or the passage of 90 days without permit issuance. Thereafter, any further discharge shall be a violation of sections 6.501 to 6.596 of this code. New significant industrial users shall apply for a wastewater discharge permit at least 90 days prior to the earlier of connecting to the city wastewater system or discharging. Any discharge by a new significant industrial user without a permit is a violation of sections 6.501 to 6.596 of this code. An existing significant user proposing to establish a new point of discharge or make a substantial change in the volume or character of its discharge or process, shall apply for an amended permit and may discharge only in conformity with its existing permit until the permit is modified. Applications shall be made to the city manager in writing on forms provided by the city and shall include the following information:
1. Name, address, telephone number and authorized representative of the applicant and service address together with the name of the operator and owners;
 2. SIC number;

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3. A list of environmental control permits held by or for the applicant;
4. A list of wastewater pollutants and their characteristics actually or potentially discharged at the applicable plant site including measured or estimated daily average and daily maximum concentrations of these pollutants;
5. A description of spill prevention measures or plans which are currently in place in the plant;
6. Water use and wastewater flow rates, including maximum daily, average daily, average monthly and seasonal variations, if any;
7. A detailed site, floor, or plumbing plan showing the size and location of all sewers, sewer connections and appurtenances, or any other facilities designed to help the applicant in meeting sections 6.501 to 6.596 of this chapter;
8. A description of activities, facilities and plant processes on the premises including a general description of types and quantities of all materials which are or could be discharged into the city wastewater system;
9. A statement regarding whether or not compliance is being achieved with sections 6.501 to 6.596 of this code on a consistent basis and if not, whether additional operation and maintenance activities and/or additional pretreatment is required for the applicant to comply with sections 6.501 to 6.596 of this code;
10. Where additional pretreatment and/or operation and maintenance activities will be required to comply with sections 6.501 to 6.596 of this code, the applicant shall provide a compliance schedule consisting of a declaration of the shortest schedule by which the applicant will provide such additional pretreatment and/or implementation of additional operational and maintenance activities.
 - a. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the applicant to comply with the requirements of this division including, but not limited to, dates relating to hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with sections 6.501 to 6.596 of this code.
 - b. Under no circumstances shall a time increment for any single step directed toward compliance which exceeds nine months be permitted.

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- c. Not later than 14 days following each milestone date in the schedule and the final date for compliance, the applicant shall submit a progress report to the city, including at least, a statement on whether or not the applicant complied with the increment of progress represented by that milestone date and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the applicant to return the construction to the approved schedule. In no event shall more than nine months elapse between such progress reports to the city;
 11. A list of each product produced by type, amount, process or processes, and rate of production;
 12. A list of the type and amount of raw materials utilized including chemicals used in process which may be discharged to the city wastewater system (average and maximum per day);
 13. Any pertinent special agreements between the applicant and the city concerning treatment of discharges, special user charges or rates, or any other information deemed necessary by the city manager;
 14. The application shall be signed by an authorized representative of the industrial user;
The city manager will evaluate the data furnished by the applicant and may determine that additional information or sampling of wastewater characteristics is necessary. If such a determination is made, the applicant, unless the time period is extended, will be given 30 days to provide the required information or sampling. If it is not provided within the designated time period, the application shall be denied. After determining that the submitted application contains all of the information required by this subsection, the city manager will consider the submission, any additional evidence that may have been requested, and any other available information relevant to the application. If the city manager determines that the proposed discharge meets the requirements of sections 6.501 to 6.596 of this code, the city manager will, within 30 days after determining that the application is complete, issue a wastewater discharge permit subject to appropriate conditions. Any application determined by the city manager to be complete shall constitute compliance with baseline monitoring report requirements under 40 CFR 403.12(b).
- (c) Modification of permit. Conditions included in a wastewater discharge permit shall remain in effect for that permit until it

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- expires, except that they may be revised by the city manager whenever the city manager deems a revision is necessary in order to effectively implement the pretreatment program, as required by city, state or federal standards or in order to effectuate the objectives of sections 6.501 to 6.596 of this code, and the city's policy to cooperate with the state and federal government or to meet any emergency. The permit holder shall be informed of any proposed changes in its permit at least 30 days prior to the effective date of change except in the event of an emergency.
- (d) Duration. Permits shall be issued for a specified time period, not to exceed three years. The permit holder shall apply for permit reissuance a minimum of 90 days prior to the expiration of its existing permit if it desires to continue to discharge. An expired permit will continue to be in effect until the city takes final action on the renewal application to issue or deny the permit ("final action") if:
1. The permit holder has submitted a complete permit application at least 90 days prior to the expiration of its permit; and
 2. The failure to take final action is not due to any act or failure to act on the part of the permit holder.
- (e) Conditions. Wastewater discharge permits shall be expressly subject to all provisions of sections 6.501 to 6.596 of this code. Where applicable, permits shall contain the following conditions:
1. Payment of applicable fees;
 2. Limits on the average and maximum discharge of restricted substances, including mass limits;
 3. Limits on average and maximum rate and time of discharge or requirements for flow regulators and equalization;
 4. Requirements for installing and maintaining pretreatment, inspection or monitoring sampling facilities;
 5. Specifications for monitoring and sampling programs which may include monitoring and sampling locations, frequency of monitoring, sampling, number, types and standards for tests and reporting schedules;
 6. Compliance schedules;
 7. Requirements for submitting technical reports or discharge reports;
 8. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city manager, and affording the city manager access thereto;
 9. Requirements for notifying the city of any new discharge of a restricted substance or any substantial change in the volume or character of the wastewater or any restricted substances being discharged into the city wastewater system;

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10. Requirements for notifying the city within two business days after a permit holder has a reasonable basis to know that the production level will significantly change within the next calendar month, and that without such notification, a permit holder must meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate;
 11. Requirements for immediately notifying the city of slug load discharges;
 12. Requirements that the permit holder notify the city of any disposal of wastewater in excess of 500 gallons to any person in any period of 12 consecutive calendar months;
 13. Authorized points of discharge and regulated processes;
 14. Requirement for immediately notifying the city manager where self-monitoring results indicate noncompliance;
 15. Requirement to report a bypass or upset of a pretreatment facility;
 16. Requirement for the significant industrial user who reports noncompliance to repeat the sampling and analysis and submit analysis to the city manager within 30 days after becoming aware of the violation;
 17. Requirement for any significant industrial user whose pretreatment system contains a back-up system to notify the city before the primary system is taken off-line, and the back-up system is put into use;
 18. Statement of applicable civil and criminal penalties for violation of pretreatment standards; and
 19. Other conditions as deemed appropriate by the city manager to achieve compliance with sections 6.501 to 6.596 of this code.
- (f) Transfer. A wastewater discharge permit shall be issued to a specific significant industrial user for a specific operation. A wastewater discharge permit shall not be assigned, transferred or sold without the approval of the city manager. Any successor significant industrial user shall agree to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the city manager of a transfer, sale or assignment of the permit.
- (g) Analysis and reporting requirements. Permit holders will be required to submit information, certifications, compliance schedules and samples of discharges or perform such tests and report such test results to the city manager as follows:
1. When required by the terms and provisions of 40 CFR Sec. 403.12 or 403.6(c)(7);
 2. When requested by state or local public agencies; or

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3. When deemed necessary by the city manager for the proper treatment, analysis or control of discharges.

All such tests and reports shall be at the cost of the permit holder. The city shall have the right to implement and enforce the provisions of 40 CFR Sec. 403.12 and 403.6(c)(7) by order of the city manager. When deemed necessary by the city manager, a permit holder may be required to obtain, install, operate and maintain an automatic sampler, analyzer or flow measuring device to monitor its discharges in the manner directed by the city.

All sampling and analysis shall be done in a manner and by a laboratory previously approved by the city manager. The city manager shall require all analysis related to any permit to be performed in accordance with the procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR Sec. 136 or other applicable analytical procedures approved by the EPA.

To the degree practicable, the city manager will provide each permit holder or applicant with information on applicable local, state and federal wastewater analysis and reporting requirements, provided, however, that any failure to do so shall not excuse the permit holder from compliance with said requirements.

(3) Mobile waste hauler permits.

- (a) Permit required. Any person proposing to be a mobile waste hauler and any person the city manager has determined is likely to be a mobile waste hauler shall secure a mobile waste hauler discharge permit from the city. Any discharge by a mobile waste hauler without a permit is a violation of sections 6.501 to 6.596 of this code except as provided in subparagraph (b) of this subsection
- (b) Application. Any existing mobile waste hauler shall apply for a mobile waste hauler discharge permit within 30 days after becoming subject to the requirements of subparagraph (a) of this subsection. Any new mobile waste hauler subject to the requirements of subparagraph (a) of this subsection shall apply at least 30 days prior to its initial discharge. Applications shall be made to the city manager in writing on forms provided by the city and shall include the following information:
 1. Name, address, telephone number and authorized representative of the applicant;
 2. SIC number and other state or federal license numbers;
 3. A list of environmental control permits held by or for the applicant;

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4. A description of spill prevention measures or plans which are currently in place for use during storage or discharge of wastewater;
5. A description of activities and methods of collection, transportation, storage and discharge of wastewater, a description of transportation and storage facilities, and a general description of types and quantities of all materials which are or could be discharged; and
6. Proof of adequate general liability and property damage insurance.

The city manager shall evaluate the data furnished by the applicant and may determine that additional information or sampling of wastewater characteristics is necessary. If such a determination is made, the applicant, unless the time period is extended, will be given 30 days to provide the required information or sampling. If it is not provided within the designated time period, the application shall be denied. After determining that the submitted application contains all the information required by this subsection, the city manager shall consider the submission, any additional evidence that may have been requested, and any other available information relevant to the application. If the city manager determines that the proposed discharge meets the requirements of sections 6.501 to 6.596 of this code, the city manager shall, within 30 days after determining that the application is complete, issue a mobile waste hauler discharge permit subject to appropriate conditions.

- (c) Modification of permit. Conditions included in a mobile waste hauler discharge permit shall remain in effect for that permit until it expires, except that they may be revised by the city manager whenever the city manager deems a revision is necessary in order to effectively implement the pretreatment program, as required by city, state or federal standards in order to effectuate the objectives of sections 6.501 to 6.596 of this code, and the policy of the city to cooperate with the state and federal government or to meet any emergency. The permit holder shall be informed of any proposed change in its permit at least 30 days prior to the effective date of change except in the event of an emergency.
- (d) Duration. Permits shall be issued for a specified time period, not to exceed three years. The permit holder shall apply for permit reissuance a minimum of 90 days prior to the expiration of its existing permit if it desires to continue to discharge. An expired permit will continue to be in effect until the city takes final action on the renewal application to issue or deny the permit ("final action") if:

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1. The permit holder has submitted a complete permit application at least 90 days prior to the expiration of its permit; and
 2. The failure to take final action is not due to any act or failure to act on the part of the permit holder.
- (e) Conditions. Mobile waste hauler discharge permits shall be expressly subject to all provisions of sections 6.501 to 6.596 of this code. Mobile waste hauler permits shall contain the following conditions:
1. Payment of applicable fees;
 2. Limits on the average and maximum discharge of restricted substances;
 3. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
 4. Compliance schedules;
 5. Requirements for submission of technical reports or discharge reports;
 6. Requirements for notification of the city of any new introduction of restricted substances or any substantial change in the volume or character of the wastewater or any restricted substances being discharged;
 7. Requirements that the permit holder notify the city of any disposal of wastewater in excess of 500 gallons to any other person in any period of 12 consecutive calendar months;
 8. Requirements for insurance coverage for all activities subject to the provisions of sections 6.501 to 6.596 of this code;
 9. Requirements that the permit holder retain a copy of a valid mobile waste hauler discharge permit in each vehicle used for transportation of wastewater, and present that permit to any employee of the city authorized to inspect the mobile waste hauler discharge permit;
 10. Requirements that the permit holder present a manifest of origin of all wastewater proposed for discharge;
 11. Requirements that the permit holder discharge only at the designated discharge point and at designated times;
 12. Requirements that the permit holder remove or otherwise clean up all spilled material or waste after discharge and that the permit holder agree to pay any public agency which provides assistance in such clean up or which performs such clean up after a failure by the permit holder to comply, an amount representing twice the amount of the actual expenditures of the public agency for labor and materials necessary to clean any spilled waste;
 13. Requirements that the permit holder apply in writing on approved forms for permission to discharge any wastewater containing any restricted substance or wastewater

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containing any substances other than domestic or septage waste and provide the operator of the treatment facility at least 24 hours' notice of proposed time of delivery of any such approved waste; and

14. Other conditions as deemed appropriate by the city manager to achieve compliance with sections 6.501 to 6.596 of this code.
- (f) Transfer. A mobile waste hauler discharge permit shall be issued to a specific mobile waste hauler for a specific operation. A mobile waste hauler discharge permit shall not be assigned, transferred or sold without the approval of the city manager. Any successor mobile waste hauler shall agree to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the city manager of a transfer, sale or assignment of the permit.
- (g) Analysis and reporting requirements. Permit holders shall be required to submit information, certifications, compliance schedules and samples of discharges or perform such tests and report such test results to the city manager as follows:
 1. When requested by state or local public agencies; or
 2. When deemed necessary by the city manager for the proper treatment, analysis or control of discharges.

All such tests and reports shall be at the cost of the permit holder. To the degree practicable, the city manager shall provide each permit holder or applicant with information on applicable local, state and federal wastewater analysis and reporting requirements, provided, however, that any failure to do so shall not excuse the permit holder from compliance with said requirements.

(Section 6.551, formerly Section 6.440, added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, effective December 17, 1993; amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20075, enacted January 27, 1997, effective February 26, 1997)

6.556 Industrial Pretreatment Program - Public Nuisance.

- (1) Unlawful discharges. Any discharge in violation of sections 6.501 to 6.596 of this code, the conditions of a discharge permit, or any other violation of sections 6.501 to 6.596 of this code is hereby declared to be a public nuisance. Such nuisance may be abated or enjoined and damages assessed therefor in accordance with other provisions in this code or in any other manner provided by law.
- (2) Activities causing unlawful discharge. Any activity which could result in or cause discharges in violation of sections 6.501 to 6.596 of this code on at least one day a month for any six months during the course of 12 consecutive calendar months is hereby declared to be a public nuisance. Such nuisance may be abated or enjoined and damages

assessed therefor in accordance with other provisions in this code or in any other manner provided by law.

- (3) Additional personnel or monitoring devices. The city manager may order the employment of one or more personnel or the installation of secured monitoring devices to assure compliance with any abatement order. Where the city manager deems such action necessary, the city manager may select the persons to be employed as monitors. The cost for compliance with such order shall be apportioned according to the laws regarding nuisance abatement.

(Section 6.556, formerly 6.445 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.561 Industrial Pretreatment Program - Cease and Desist Order.

- (1) In the event of any actual or threatened discharge in violation of sections 6.501 to 6.596 of this code or the conditions of a discharge permit, which discharge presents an imminent or existing danger to the health or welfare of persons, property or the environment or which has caused or will cause interference, pass through or contamination of the resulting sludge, the city manager may issue an order to cease and desist and direct that the person responsible for such violation:
- (a) Comply forthwith;
 - (b) Comply in accordance with the time schedule set forth by the city manager; or
 - (c) Take appropriate remedial or preventative action.
- (2) If the person or permit holder in violation fails to comply with the order, the city shall take such steps as are deemed necessary or proper including immediate severance of the sewer connection. The city shall reinstate the wastewater treatment service upon proof of the elimination of the actual or threatened violation. The filing of an appeal pursuant to section 6.591 of this code shall not stay enforcement.

(Section 6.561, formerly Section 6.450 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance 19940, enacted November 17, 1993, effective December 17, 1993.)

- 6.566 Industrial Pretreatment Program - Submission of Time Schedule.** If the city manager finds that a discharge has taken or may take place in violation of sections 6.501 to 6.596 of this code or the conditions of a discharge permit, the city manager may require the person or permit holder responsible therefor to submit for approval, within such time and with such modifications as the city manager deems necessary, a detailed time schedule of specific actions which the person or permit holder shall take in order to prevent or correct the violation.

(Section 6.566, formerly Section 6.455 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.571 Industrial Pretreatment Program - Termination and Revocation of Discharge Permit.

- (1)** Any industrial user who violates any of the provisions of sections 6.501 to 6.596 of this code or, where applicable, the conditions of its discharge permit, may have its discharge permit revoked and/or sewer connection severed by order of the city manager.
- (2)** The order shall be signed by the city manager and shall specify the nature and source of the violation. The order shall be delivered or sent by regular mail to the address of the industrial user. The order may specify the corrective actions to be taken and shall allow reasonable time for satisfactory correction. If the industrial user does not correct the violation within the time specified, or such additional time as may be allowed in writing by the city manager, then the discharge permit shall be revoked and/or the sewer connection severed as provided in the order. Correction of the violation shall not preclude assessment of monetary penalties.
- (3)** The filing of an appeal pursuant to section 6.591 of this code shall stay enforcement under this section pending final administrative action on the appeal. This provision supplements and does not restrict other provisions of this code, laws or regulations authorizing termination of service for delinquency in payment of fees or charges.
- (4)** Any industrial user whose discharge permit is revoked pursuant to this section shall be prohibited from applying for a new discharge permit for a period of two years from the date of final decision. The prohibition may be waived if the city manager determines that the issuance of a new discharge permit is necessary to avert an imminent or existing danger to the health or welfare of persons, property or the environment.

(Section 6.571, formerly Section 6.460 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20075, enacted January 27, 1997, effective February 26, 1997.)

6.576 Industrial Pretreatment Program - Public Notification of Significant Noncompliance. The city shall publish in a daily newspaper with the largest daily circulation in the metropolitan area, not less than annually, a list of those industrial users which during the previous 12 months were in significant noncompliance with sections 6.501 to 6.596 of this code or their discharge permits. This notification will summarize enforcement action by the city during the same 12 months. For purposes of this section, an

industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (a) Chronic violations of wastewater discharge limits, defined herein as those in which 66 percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (b) Technical review criteria (TRC) violations, defined herein as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- (c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the city manager determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city personnel or the general public);
- (d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the city's exercise of its emergency authority under section 6.561 of this code to halt or prevent such a discharge;
- (e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone for starting construction, completing construction, or attaining final compliance;
- (f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance;
- (h) Any other violation or group of violations which the city manager determines will adversely affect the operation or implementation of the local pretreatment program.

(Section 6.576, formerly 6.462 added by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.581 Industrial Pretreatment Program - Implementation. Nothing in sections 6.501 to 6.596 shall prevent the city manager from seeking judicial or governmental agency assistance to implement the purposes and provisions thereof.

(Section 6.581, formerly 6.463 added by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.586 Industrial Pretreatment Program - Enforcement Orders.

- (1) Generally. In addition to any penalty or fine which may otherwise be charged, or other enforcement action which may otherwise be taken against any industrial user found to be in violation of any provision of this code, the city manager may:
- (a) Issue a written notice of noncompliance;
 - (b) Issue a written notice of violation;
 - (c) Impose an administrative civil penalty under section 2.018 of this code; and
 - (d) Issue a written compliance order. The person to whom the compliance order is issued shall comply with the order. Any violation of the compliance order shall be subject to the same enforcement actions as any other violation of this code.

The notices or orders authorized hereunder shall advise the industrial user of the right to appeal the penalty or order in accordance with the provisions of subsection (6) of this section.

- (2) Basis of penalty. A noncompliance penalty may be levied by the city manager when either a constituent limitation has been exceeded or a compliance requirement has not been met. The city manager may impose a penalty on any such industrial user for each day the industrial user has allowed a discharge in violation of this code, rules adopted hereunder, notice of violation, or administrative compliance order, or in excess of permit limitations or otherwise has failed to observe the requirements of its discharge permit. The city manager may adopt a schedule of graduated penalties based on the nature, length and frequency of noncompliance.
- (3) Constituent limitation. A constituent limitation is exceeded when:
- (a) The concentration of a restricted substance in any sample or in a series of samples taken during the appropriate time period therefor, has exceeded limitations published by the city manager, or any other limitation imposed by a discharge permit; or
 - (b) The pH of any sample is outside the permitted pH range, or
 - (c) A continuous recording pH instrument indicates that the pH of the industrial discharge:
 - 1. Is lower than 5.5 or greater than 12.0 for more than 30 minutes in any calendar day, or
 - 2. Is lower than 5.0 or greater than 12.5 at any time during a calendar day, or
 - (d) The volume restrictions of a discharge permit are exceeded.
- (4) Compliance requirement. A compliance requirement has not been met when any requirement established by the discharge permit or by any provision of sections 6.501 to 6.596 of this code, or by regulations published by the city manager or by an order issued by the city manager other than a constituent limitation, has not been met, including a failure to submit any required reports.

- (5) Collection procedure. Collection of the penalties determined by the city manager shall be in the manner provided in this code for the collection of sewer user charges, in accordance with any other provisions of this code, or in any other manner provided by law.
- (6) Appeal. If the industrial user objects to any civil penalty or compliance order issued pursuant to subsection (1) of this section, the industrial user may appeal therefrom in accordance with the provisions of section 2.021 of this code.
- (7) Penalties cumulative. The penalties provided in this section shall be in addition to any other remedy that the city may have pursuant to this code or in any other manner provided by law.

(Section 6.586, formerly 6.464 added by Ordinance No. 19791, enacted July 8,, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993; and Ordinance No. 20075, enacted January 27, 1997, effective February 26, 1997.)

6.591 Industrial Pretreatment Program - Reconsideration and Appeal.

- (1) Reconsideration by city manager. Any person aggrieved by any decision or action of the city manager, other than action under section 6.586 of this code, may file a written request with the city manager for reconsideration thereof within ten days of receipt of notification of such decision or action. The request for reconsideration shall be on a form provided by the city manager and shall set forth in reasonable detail the decision or action objected to and the facts and arguments supporting the appellant's request for reconsideration. The city manager may establish such procedures as may be deemed necessary or proper to conduct the reconsideration process. The filing of a request for reconsideration shall be a condition precedent to the right to appeal to the Metropolitan Wastewater Management Commission (MWMC) pursuant to subsection (2) of this section.
- (2) Appeal to Metropolitan Wastewater Management Commission. Any person aggrieved by the final determination of the city manager, other than action under section 6.586 of this code, may appeal such determination to the MWMC. Written notification of such appeal shall be filed with the MWMC and city manager within ten days after receipt of the final determination of the city manager. A fee established as provided in section 2.020 of this code shall accompany the notice of appeal filed with the city. The notice of appeal shall be on a form provided by MWMC and shall set forth in reasonable detail the decision or action appealed from and the facts and arguments supporting the appellant's request for reversal or modification of the city manager's determination. The MWMC shall conduct a hearing on the appeal according to procedures to be established by the MWMC pursuant to paragraph 12 of the Intergovernmental Agreement. The MWMC shall submit a copy of its findings and recommendations regarding the

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appeal to the city council within ten days after the hearing. The city council may hold a hearing on the recommendations and, in any event, shall take action on the recommendations within 20 days after their filing.

(Section 6.591, formerly 6.465 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; amended by Ordinance No. 19913, enacted April 26, 1993, effective May 26, 1993; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1993, effective December 17, 1993.)

6.596 Industrial Pretreatment Program - Damage to Facilities/Correction of Violations. Any person who violates sections 6.501 to 6.596 of this code or a condition of a discharge permit, as a result of which the city performs or causes to be performed preventive or corrective work or which results in damage to the city wastewater system shall be liable to the city for such damage and the cost of such preventive or corrective work, additional treatment and for any penalties, including withholding of any grant money, levied against the city for violation of state or federal permits resulting from said violation. The city may collect such charges in the manner provided in this code for the collection of sewer service charges, in accordance with any other provisions of this code, or in any other manner provided by law.

(Section 6.596, formerly Section 6.470 added by Ordinance No. 19130, enacted April 13, 1983; amended by Ordinance No. 19791, enacted July 8, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance No. 19940, enacted November 17, 1994, effective December 17, 1994.)

Stormwater Service and Facility Maintenance

6.600 Charges for Stormwater Service.

- (1) Except as the charges may be reduced under subsection 6.416(3), the obligation to pay stormwater service charges arise when a person responsible uses stormwater services. It is presumed that stormwater services are used whenever there is an improved premises.
- (2) Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the city, the person(s) paying water utility charges shall pay the stormwater service charges. If there is no water service to the property or if water service is discontinued, the stormwater service charges shall be paid by the person(s) having the right to possess the property. The stormwater service charges shall be set by the city manager using the procedures, criteria and limitations set out in section 6.411 of this code. The city manager shall review and determine the monthly charges for stormwater service on at least an annual basis.

(Section 6.600 added by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.605 Initiation and Adjustment of Billing. Using stormwater service or receiving final approval of improvements authorized by a plumbing permit, whichever first occurs, will automatically initiate appropriate billing for stormwater services as established by section 6.600 of this code. If development of a parcel does not require a plumbing permit, the creation or modification of any impervious surface from which stormwater may be discharged into city stormwater system shall initiate the obligation to pay the stormwater service charges.

(Section 6.605 added by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.610 Stormwater and Sewers - Connection; Equivalent Assessments.

- (1) No person shall connect or allow to remain connected to the city wastewater system a drain, downspout or other conduit carrying storm water. This type of drain, downspout or other conduit shall be discharged into a retention facility on the same property, a watercourse or into the city stormwater system.
- (2) No person shall connect a drain, downspout or other conduit carrying stormwater to the city stormwater system without first paying the fees required by this section and obtaining a permit from the city engineer. The city engineer shall issue the permit upon payment of the required fee and assessments and upon a determination that the proposed connection is a proper use of the city stormwater system. A fee for a permit required by this section shall be set as provided in section 2.020 of this code. Permits shall only be issued to a property owner for

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connections for the owner's personal residence or to a licensed plumber or licensed septic tank installation contractor.

- (3)** In all building plans submitted to the building official, where the improvement sought to be made modifies and existing impervious surface or creates a new impervious surface which will have stormwater runoff, such plans shall show what connections to the city stormwater system are contemplated and what stormwater is to be discharged therein, and show the method of and facilities for the disposal of any stormwater that is not to be discharged into the city stormwater system. Such plans so submitted shall be reviewed and approval granted by the city engineer. The building official shall not approve the plans until this approval is given.
- (4)** In addition to the permit fee required by subsection 6.610(2), when the owner of real property connects or seeks to connect the owner's property to the city stormwater system for which the city has paid in anticipation of future assessment to benefitted property or for which the city has given a credit under subsections 7.730(3) and 7.730(4), based upon the size of the stormwater sewer that would be assessable under subsection 7.175(5), the owner shall pay to the finance officer an equivalent assessment and any other fees required by the city before connecting to the stormwater sewer. If the property has delinquent local improvement assessments against it, before issuing the stormwater sewer connection permit, all delinquent assessments shall be brought current. The equivalent assessment shall be determined by the city engineer, taking into account the city policies regarding the size of stormwater sewer assessed to benefitted property, based on the greater of the credit given under subsection 7.730(3) or (4) for the stormwater sewer to which connection is proposed or the cost at the time of connection of local improvement assessments for similar stormwater sewers. As used in this subsection "cost" includes the expenses identified in section 7.170. The total equivalent assessment shall be reduced by any principal payment received on a local improvement assessment levied against the property for a stormwater sewer. Any person aggrieved by the city engineer's determination of the equivalent assessment may seek its review by the city manager by filing a written request for its review within ten days of the city engineer's determination. The city manager or the manager's designee shall consider the request by using the applicable procedures set forth at section 2.021 of this code. The determination on the appeal shall be in writing and shall be issued within 10 days of the hearing. On the date of issuance, a copy of the decision shall be mailed to the appellant, the city engineer and other parties who have requested a copy. The decision of the city manager or the manager's designee shall be final.
- (5)** In lieu of paying the equivalent assessment at the time of issuance of the permit to connect, the owner of the real property to be connected to

the stormwater sewer may execute and deliver to the finance officer an agreement to pay the equivalent assessment in installments. The finance officer may accept the owner's agreement to pay only if it is consistent with the limits established under subsection 7.160(2) and (3). Equivalent assessments paid as provided in this subsection shall be charged interest on the unpaid principal balance as provided in section 2.022 of this code and are hereby declared a lien against the real property and shall be docketed in the lien docket of the city and may be foreclosed in the same manner as other assessment liens.

- (6) Nothing in this section shall prevent the city from creating a local improvement district for stormwater sewers under section 7.175 upon a determination that an existing stormwater sewer for which the city has given credit under subsection 7.730(3) and (4) is determined to specially benefit property that did not pay for the stormwater sewer or upon a determination that the city constructed an existing stormwater sewer in anticipation of assessing its costs to specially benefitted property that did not pay for the stormwater sewer at the time of construction. Such assessments shall be calculated upon the greater of the amount of credit given by the city or of the cost of constructing a similar stormwater sewer at the time of the formation of the local improvement district. If a property has been given an equivalent assessment under subsection 6.610(4) it may not be assessed again for the same stormwater sewer.
- (7) The equivalent assessment required by this subsection shall be used for city stormwater sewer purposes and shall be in addition to all other fees and assessments required by this code.

(Section 6.610, formerly Section 7.065 amended by Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 20301, enacted November 10, 2003, effective December 10, 2003; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

6.615 Stormwater Facility Operation and Maintenance.

- (1) Purpose. The purpose of section 6.615 is to ensure that stormwater management facilities designed and constructed in accordance with sections 9.6790 through 9.6797 of this code and the Stormwater Management Manual adopted by administrative order of the city manager are operated and maintained in a manner that protects life and property from flood and drainage hazards, protects water quality, and protects the waterways in the headwaters area from the erosive effects of runoff.
- (2) Applicability. Section 6.615 applies to all stormwater facilities designed and constructed in accordance with sections 9.6791 through EC 9.6797 of this code and the Stormwater Management Manual.
- (3) Maintenance responsibility.

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- (a) Unless the city accepts the responsibility to operate and maintain a stormwater facility, all stormwater management facilities shall be privately operated and maintained.
 - (b) All stormwater facilities shall be operated and maintained in accordance with the applicant's Operations and Maintenance Plan submitted to the city with the application proposing the private operation and maintenance of the stormwater facility.
- (4) Reports. Periodic reports verifying that the stormwater facility is and has been operated and maintained as required in (3)(b) above, shall be prepared and submitted to the city within the time and manner required by administrative rules adopted by the city manager pursuant to section 2.019 of this code.
- (5) Enforcement.
- (a) Inspections. The city may make periodic inspections to ensure compliance with this code, the Stormwater Management Manual, and the Operations and Maintenance Plan. Authorized representatives of the city may enter private property at reasonable times to ensure such compliance and to conduct on-site inspections or routine maintenance of stormwater facilities. If the premises are occupied, the city representative shall first present proper credentials and request entry. If the premises are unoccupied, reasonable efforts shall first be made to locate the owner or person in charge of the premises and request entry. No person shall deny a request for, or interfere or prevent any inspection authorized by this section. Should entry be refused, the city shall have recourse to every remedy provided by law to secure entry, including the issuance of a search warrant.
 - (b) Violations. Failure to operate and maintain a stormwater facility in accordance with section 6.615, the Stormwater Management Manual or the Operations and Maintenance Plan may result in:
 1. The issuance of a stop work order or compliance order by the city;
 2. The issuance of a citation into municipal court for violation of this code;
 3. The imposition of an administrative civil penalty pursuant to the provisions of section 2.018 of this code as authorized by section 6.995 of this code;
 4. An order to investigate all of the impacts caused by the violation; and/or
 5. Abatement of the unlawful actions as a nuisance as provided in sections 6.005 through 6.115 of this code, including, but not limited to, complete restoration of all impacts to open waterways resulting from the unlawful actions.
 - (c) For purposes of subsections (5)(b)2 and (5)(b)3 of section 6.615, each date that the unlawful condition exists shall constitute a separate violation.

- (d) For purposes of enforcing an administrative civil penalty imposed under this section and, if applicable, entry of a lien pursuant to section 2.018(11), if the violation for which the penalty was imposed involves a stormwater facility located on a portion of a planned unit development, condominium or other development that is commonly owned or owned by a homeowners' association, each parcel or unit in the development shall be liable for the administrative civil penalty, and the city may enter a lien for the full amount of the unpaid administrative civil penalty against each parcel or unit in the development.
 - (e) Failure to file a periodic report required by subsection (4) of this section and administrative rules adopted pursuant to that section may result in imposition of an administrative civil penalty pursuant to the provisions of section 2.018 of this code.
 - (f) Appeal. Any person to whom a stop work order or compliance order is issued may appeal the stop work order or compliance order within the time and in the manner prescribed in section 2.021 of this code. Notwithstanding any other provision of this code, a stop work order or compliance order shall be effective upon issuance, and shall continue in effect during the pendency of any appeal.
- (6) Rules and fees. The City manager may adopt rules and fees for implementation of section 6.615, using the procedures in sections 2.019 and 2.020 respectively of this code.

(Section 6.615 added by Ordinance No. 20373, enacted November 22, 2006, effective December 22, 2006.)

Erosion Prevention

- 6.625** Erosion Prevention - Purpose. Sections 6.625 to 6.645, and the rules issued thereunder, are intended to restrict the discharge of sediments or other construction related materials, including hazardous substances as defined in section 6.340, into the city's stormwater system in order to:
- (a) Prevent or minimize, to the maximum extent practicable, negative impacts to adjacent properties, water quality, and related natural resources resulting from construction activities; and
 - (b) Maintain the capacity of the city's stormwater system by minimizing sedimentation.

(Section 6.625 added by Ordinance No. 20067, enacted October 16, 1996, effective November 16, 1996.)

6.630 Erosion Prevention - Applicability and Compliance.

- (1) Scope. The provisions of sections 6.625 to 6.645, and the rules issued thereunder, apply to all construction related activities that result in any one or all of the following:

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- (a) Land disturbance, including, but not limited to clearing, grading, grubbing, logging, excavating, filling, and storing of materials;
- (b) Structural development, including, but not limited to buildings, bridges, roads, and other infrastructure;
- (c) Impervious surfaces, including, but not limited to parking lots, driveways, walkways, and patios; or
- (d) Dewatering.

Notwithstanding the foregoing, the following activities shall be exempt from the provisions of sections 6.625 to 6.645: (i) actions by a public utility, the city, or any other governmental agency to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic; or (ii) actions by any other person when the city determines, and documents in writing, that the actions are necessary to remove or alleviate an emergency condition, restore utility service, or reopen a public thoroughfare to traffic.

- (2) **Compliance.** No person shall engage in any construction related activity covered by subsection (1) in a manner that can potentially impact water quality, except as allowed by this code. All persons shall implement erosion prevention measures designed to meet the outcomes established in administrative rules promulgated by the city manager. Failure to meet those outcomes shall subject the person to the same enforcement provisions as those applicable to a permit holder under section 6.640.

(Section 6.630 added by Ordinance No. 20067, enacted October 16, 1996, effective November 16, 1996.)

6.635 Erosion Prevention - Permits.

(1) Erosion Prevention Permit.

- (a) **Permit required.** Except as otherwise provided in subsection (3) below, no person shall commence any construction related activity without first obtaining from the city one of the erosion prevention permits listed in subparagraph (b) if the construction related activity:
 - 1. Disturbs one or more acres of land at any one time by one or more phases of development, and the disturbance is located on the same parcel of land or on contiguous parcels of land under the same ownership; or
 - 2. Is located in a sensitive area. The criteria for classifying sites, and the classification of such sites as sensitive areas shall be established in administrative rules issued by the city manager.
- (b) **Permit classifications.** The city manager may issue all of the following types of permits, any of which will meet the requirements of subsection (a) of this section:

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1. Individual permit. A property owner or easement holder of record may obtain a separate individual permit for each construction activity on the same parcel of land.
 2. Umbrella permit. A property owner or easement holder of record may obtain an umbrella permit for multiple construction activities on the same parcel of land that are proposed in connection with a development, including utility work, private infrastructure, structures, and other site improvements.
 3. Annual permit. An annual permit may be issued for minor recurring activities.\
- (c) Application. The application for an erosion prevention permit shall be accompanied by:
1. Fee. A fee established by the city manager pursuant to section 2.020 of this code in an amount sufficient to recover the city's administrative costs;
 2. Construction site management plan for individual and umbrella permits. A construction site management plan prepared by a certified professional(s) designated by the manager in rules adopted hereunder. The construction site management plan need not be prepared by a certified professional if the development is one (1) single family dwelling or one (1) duplex dwelling. The construction site management plan shall be kept at the construction site and available for on-site inspection purposes. The construction site management plan shall identify: potential water quality impacts associated with the proposed construction activities; techniques and methods to be used to prevent and control erosion, sedimentation, and other pollutants associated with construction activity; and the location, design, and construction schedule for all erosion, sedimentation, and other construction site management control measures to be implemented and maintained; and
 3. Work, scope and practices for annual permit. No construction site management plan shall be required for an annual permit. Instead, the applicant shall provide a description of the scope of work to be performed and the practices to be employed for meeting the requirements of sections 6.625 to 6.645 of this code. A copy of the annual permit shall be kept at the site and available for on-site inspection purposes.
- (d) Review and Issuance. The application for the erosion prevention permit shall be reviewed by the city and approved, approved with conditions, or denied, based on criteria set forth in rules adopted by the city manager. The criteria to be adopted shall be designed to achieve the objectives listed in section 6.625. Issuance of an

erosion prevention permit may be subject to conditions imposed by the city including, but not limited to, specific erosion and sedimentation prevention measures and schedules.

- (e) Permit Duration. An erosion prevention permit shall remain in effect for the full period of the construction activity. The manager may extend the duration of the permit for a period of up to, but not to exceed, two years after completion of the construction activity if the manager determines the extension is necessary to ensure that the construction activity has stabilized in accordance with the outcomes identified in the administrative rules.
- (2) Appeal. Within the time and in the manner prescribed in section 2.021 of this code, the applicant for a permit may appeal (a) the denial of a permit, (b) any conditions imposed on a permit, (c) the determination that the property is located in a sensitive area, or (d) an extension of the duration of a permit under section 6.635(1)(e).
- (3) Waiver of Erosion Prevention Permit. Notwithstanding any other provisions of this section, the following activities shall not require an erosion prevention permit:
 - (a) Construction activities involving the disturbance of less than 500 square feet of land surface area, or which consist of the excavation and/or fill of less than 20 cubic yards of material;
 - (b) Issuance of permits and/or approvals for land divisions, interior improvements to an existing structure, or other approvals for which there is no physical disturbance to the surface of the land; and
 - (c) Annual landscape maintenance activities on fully developed properties, necessary to maintain the existing developed landscape.

(Section 6.635 added by Ordinance No. 20067, enacted October 16, 1996, effective November 16, 1996; and amended by Ordinance No. 20177, enacted November 8, 1999, effective December 8, 1999.)

6.640 Erosion Prevention - Enforcement.

- (1) Enforcement Policy. The primary focus of sections 6.625 to 6.645 is to implement measures for preventing erosion and minimizing stormwater impact that will meet the outcomes established in administrative rules promulgated by the city manager, and the city will use the amount of enforcement necessary to achieve compliance. Where possible the city will rely on education rather than enforcement. The manager may provide educational programs or other informational materials that will assist permittees in meeting the desired erosion and sedimentation controls, and other construction site management practices outcomes.
- (2) Inspections. The city may make periodic inspections to ensure compliance with this code, rules issued hereunder, or conditions imposed on an erosion prevention or other permit.

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- (3) Violations.** Failure to comply with the provisions of this code, rules issued hereunder, the erosion prevention permits, or conditions imposed thereon, during the period that the permit(s) remains in effect may result in:
- (a) The issuance of a stop work order or compliance order by the city;
 - (b) The issuance of a citation into municipal court for violation of this code; and/or
 - (c) The imposition of an administrative civil penalty pursuant to the provisions of section 2.018 of this code as authorized by section 6.995 of this code.

Failure to comply with any stop work or compliance order issued by the city shall constitute a separate violation. Each day a violation continues also shall constitute a separate violation.

- (4) Appeal.** Any person to whom an order is issued may appeal a stop work order or compliance order within the time and in the manner prescribed in section 2.021 of this code. Notwithstanding any other provision of this code, a stop work order or compliance order shall be effective upon issuance, and shall continue in effect during the pendency of any appeal.

(Section 6.640 added by Ordinance No. 20067, enacted October 16, 1996, effective November 16, 1996 amended by Ordinance No. 20169, enacted September 27, 1999, effective October 27, 1999; and Ordinance 20177, enacted November 8, 1999, effective December 8, 1999.)

- 6.645 Erosion Prevention - Rules.** The city manager may adopt rules for implementation of sections 6.625 to 6.640, following the procedures in section 2.019 of this code. The rules may include, but need not be limited to:
- (a)** The form and content of an erosion prevention permit;
 - (b)** Additional criteria for identifying "sensitive areas" within the city, and preparation of a map identifying sensitive areas;
 - (c)** The definition of a certified professional;
 - (d)** The definition of maximum extent practicable;
 - (e)** The form and minimum criteria to be included in a construction site management plan, including required construction site management practices;
 - (f)** Erosion prevention design standards; and
 - (g)** Criteria for violation of sections 6.625 to 6.640 of the Eugene Code, 1971.

(Section 6.645 added by Ordinance No. 20067, enacted October 16, 1996, effective November 16, 1996.)

Open Waterways

6.650 Open Waterways - Purpose.

(Section 6.650 added by Ordinance No. 20194, enacted April 24, 2000, effective May 24, 2000; and repealed by Ordinance 20430, enacted March 9, 2009, effective June 10, 2009.)

6.655 Open Waterways - Prohibition.

(Section 6.655 added by Ordinance No. 20194, enacted April 24, 2000, effective May 24, 2000. and repealed by Ordinance 20430, enacted March 9, 2009, effective June 10, 2009.)

6.660 Open Waterways - Exemptions.

(Section 6.660 added by Ordinance No. 20194, enacted April 24, 2000, effective May 24, 2000. and repealed by Ordinance 20430, enacted March 9, 2009, effective June 10, 2009.)

6.665 Open Waterways - Enforcement.

(Section 6.665 added by Ordinance No. 20194, enacted April 24, 2000, effective May 24, 2000. and repealed by Ordinance 20430, enacted March 9, 2009, effective June 10, 2009.)

6.670 Open Waterways - Appeals.

(Section 6.670 added by Ordinance No. 20194, enacted April 24, 2000, effective May 24, 2000. and repealed by Ordinance 20430, enacted March 9, 2009, effective June 10, 2009.)

Climate Recovery

6.675 Climate Recovery – Climate Action Goals. The city shall carry out the requirements of sections 6.680 through 6.690 of this code in order to achieve the following goals:

- (1)** By the year 2020, all city-owned facilities and city operations shall be carbon neutral, either by reducing greenhouse gas emissions to zero, or, if necessary, by funding of verifiable local greenhouse gas reduction projects and programs or the purchase of verifiable carbon offsets for any remaining greenhouse gas emissions.
- (2)** By the year 2030, the city organization shall reduce its use of fossil fuels by 50% compared to 2010 usage.
- (3)** By the year 2030, all businesses, individuals and others living or working in the city collectively shall reduce the total (not per capita) use of fossil fuels by 50% compared to 2010 usage.

(Section 6.675 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

6.680 Climate Recovery – Assessment. Within six months of August 29, 2014, the city manager or the manager’s designee shall complete an assessment of current efforts to reach the climate action goals. The assessment shall include a review and analysis of the following:

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- (1) Trends in current energy use for the community and for city operations and facilities; and
- (2) Progress in implementing the community climate and energy action plan and the internal climate action plan.

(Section 6.680 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

6.685 **Climate Recovery – Targets & Benchmarks.** To reach the climate action goals, the city council shall establish numerical targets and benchmarks, and take other actions that the council determines are necessary, for achieving the required reductions through the following steps:

- (1) Within 12 months of August 29, 2014, the city manager shall propose for adoption by the city council the following targets and benchmarks:
 - (a) Numerical greenhouse gas and fossil fuel reduction targets equivalent to achieving the related goals; and
 - (b) Two-year and five-year benchmarks for reaching the numerical targets.
- (2) The city manager shall propose for adoption by the city council, a numerical community-wide goal or “carbon budget” for greenhouse gas emission reductions consistent with achieving 350 parts per million of CO₂ in the atmosphere by the year 2100. The community-wide goal shall include numerical targets and associated benchmarks.
- (3) The city manager shall adopt administrative rules pursuant to section 2.019 of this code that establish a specified baseline amount and appropriate greenhouse gas inventory methodology.
- (4) When the city manager prepares options for council consideration pursuant to this section, including options for meeting the goals, the manager shall include a triple bottom line assessment of the options including a cost-benefit analysis.

(Section 6.685 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

6.690 **Climate Recovery – Reporting.** Following council adoption of the numerical targets and benchmarks, the city manager shall report to the city council on progress in reaching adopted climate action goals as follows:

- (1) Provide a progress report every two years.
- (2) Provide a comprehensive report every five years that includes an assessment of greenhouse gas emission reductions to date and the status in reaching the established targets and benchmarks. If the five-year comprehensive report indicates that the city is not reaching the adopted targets and benchmarks, the city manager or the manager’s designee shall:
 - (a) Conduct an analysis of possible actions to get back on track to achieve the next adopted benchmark, together with a triple bottom line analysis of those options.

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- (b) Develop for council consideration potential revisions to the plan that reflect the necessary actions to achieve the next adopted benchmark.
- (3) Update the community climate and energy action plan and the internal climate action plan every five years, which shall be based on the updated greenhouse gas inventory.

(Section 6.690 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

Ozone Protection

- 6.700** **Ozone Protection - Intent.** The intent of sections 6.700 to 6.725 is to reduce the sale and use of ozone depleting products within the city of Eugene. These sections attempt to accomplish this goal through:
- (a) Educating the public about ozone-depleting products and alternatives to those products; and
 - (b) Prohibiting the sale and use of certain ozone-depleting products for which safe and cost-competitive alternative products exist.

(Section 6.700 enacted by Ordinance No. 19994 on December 7, 1994, effective January 6, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

- 6.705** **Ozone Protection - Definitions.** For purposes of section 6.705 to 6.725, the following words and phrases mean:

City manager. The city manager of the city of Eugene, or the city manager's designee.

Commercially use. A product or process which uses or is utilized by a person in the provision of services to another person or business.

Ozone depleting chemical. A chlorofluorocarbon (CFC), hydrochlorofluorocarbon (HCFC), halon, methyl chloroform (1,1,1 trichloroethane), methyl bromide, carbon tetrachloride (tetrachloromethane) or any chemical compound that hereafter becomes designated an "ozone depleting chemical".

Ozone-depleting products. Any product containing an ozone-depleting chemical or installed with the use of an ozone-depleting chemical, including products employing ozone-depleting chemicals as blowing agents.

(Section 6.705 enacted by Ordinance No. 19994 on December 7, 1994, effective January 6, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

6.710 Ozone Protection - Product Restrictions.

- (1) Restrictions on the Sale and Use of Plastic Foam Insulation Products used in Construction. No person shall (a) sell insulation made with ozone-depleting chemicals; (b) install any insulation containing, or manufactured using, ozone-depleting chemicals in, on or under any structure; or (c) sell or use a blowing agent containing ozone-depleting chemicals.
- (2) Restrictions on the Sale and Use of Other Products Containing HCFCs: No person shall sell or use any of the following products if they contain HCFCs: aerosol propellants, fire extinguishers, electronic solvents, and metal solvents.
- (3) Restrictions on the Sale and Use of Pesticides. No person shall sell or use any pesticide containing HCFC 123, CFC 113, methyl bromide, or any other ozone-depleting chemical which is installed with an agent containing HCFC 123, CFC 113 or methyl bromide.
- (4) Effective Date of Restrictions. Notwithstanding subsections (1) to (3), the restrictions imposed by those subsections shall not take effect until 90 days after the city manager determines under section 6.725, that ozone-safe substitutes exist for the ozone-depleting products. The restrictions imposed by subsections (1) to (3) shall apply only to the products for which such a determination is made.
- (5) Restrictions on the Sale and Use of Other Ozone-Depleting Products.
 - (a) If the city manager determines, based on the criteria and methodology established pursuant to section 6.725, that sale and use of a product not included in subsection (1) to (3) of this section should be prohibited, the city manager shall so designate that product by amending the rule containing the list of prohibited ozone-depleting products referred to in subsection (1)(b) of section 6.725, to include the additional product.
 - (b) No person shall sell or use any product which the city manager designates as a prohibited ozone-depleting product pursuant to paragraph (a) of this subsection. The prohibition contained in this paragraph shall take effect 90 days after the city manager's action in subparagraph (a) of this subsection.

(Section 6.710 enacted by Ordinance No. 19994 on December 7, 1994, effective January 6, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

6.715 Ozone Protection - Exemption for Use of Existing Inventories. The prohibitions on use of ozone-depleting products contained in section 6.710 shall not apply to use of any such products owned by the person at the time that the prohibition takes effect. Nothing in this section shall exempt the sale of such materials from the prohibitions contained in section 6.710.

(Section 6.715 enacted by Ordinance No. 19994 on December 7, 1994, effective January 6, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

6.720 Ozone Protection - Violations.

- (1) If the city manager determines that a person is violating the prohibitions contained in section 6.710, the city manager shall notify the person of the violation and of alternative chemicals, products and informational sources regarding the prohibited product.
- (2) If a person notified under subsection (1) of this section again uses or sells the prohibited product 60 days or more after the date of notification under subsection (1), the city manager may issue, pursuant to subsection (5) of this section, a notice of imposition of an administrative civil penalty of \$500. For purposes of this subsection and subsection (3), "product" shall mean a generic type of merchandise or item, such as "hair spray" and "paint."
- (3) If a person receiving a notice of imposition of an administrative civil penalty under subsection (2) sells or uses the prohibited product ten days or more after the date of the administrative civil penalty, the city manager may impose an additional administrative civil penalty in the amount of \$1,000. Each subsequent violation shall subject the person to an administrative civil penalty of \$1,000 per violation. For purposes of this section, a "subsequent violation" means selling or using, after the date of the previous notice imposing an administrative civil penalty, the product that formed the basis of the prior administrative civil penalty.
- (4) Notwithstanding the provisions of sections 2.018 and 6.995 of this code, this section shall govern the amount of the administrative civil penalties for violations of sections 6.700 to 6.725. Any such administrative penalties shall be in addition to, and not in lieu of, any other penalty authorized by section 6.992 or any other action authorized by law.
- (5) Notices of administrative civil penalties and appeals of those notices shall be governed by subsections (6) to (11) of section 2.018.

(Section 6.720 enacted by Ordinance No. 19994 on December 7, 1994, effective January 6, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

6.725 Ozone Protection - Rulemaking.

- (1) The city manager shall adopt, pursuant to section 2.019 of this code, administrative rules to implement sections 6.700 to 6.725. Such rules shall include, but need not be limited to:
 - (a) Additional and more detailed definitions of the words and terms used in sections 6.700 to 6.725;
 - (b) A list of ozone-depleting products which cannot be sold or used;
 - (c) Criteria and methodology for determining whether a product should be added to the list referred to in subsection (b) of this section; and
 - (d) A process for receiving and responding to complaints from citizens about alleged violations of these code sections.

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- (2)** The rules also may include criteria for designating as "ozone-depleting chemicals" additional chemical compounds not listed in the definition of "ozone-depleting chemical" contained in section 6.705. Such criteria shall require consideration of any conclusions of:

 - (a) The U.S. Environmental Protection Agency, and
 - (b) The United Nations Environment Program as to whether a chemical compound is ozone-depleting. Unless and until the city manager has adopted criteria under this subsection (2), the manager shall not designate any additional chemical compounds as "ozone-depleting chemicals."
- (3)** The criteria for determining whether an ozone-depleting product shall be included on the list referenced in paragraph (1)(b) of this section shall include a requirement that an "ozone-safe substitute" is available. The criteria also shall provide that to qualify as an ozone-safe substitute, a product must meet both of the following requirements:

 - (a) The alternate product is readily available and its use will cost no more than the use of the ozone-depleting product; and
 - (b) The use of the alternate product will not pose threats to the public health and safety.
- (4)** To the extent of available resources, the city manager shall determine whether all products covered by subsections 6.710(1)-(3) qualify as ozone-depleting products under the criteria adopted pursuant to section 6.725(3). If the manager determines that a product does so qualify, the manager shall propose, by rule, to include the product on the list referenced in paragraph (1)(b) of this section. If the manager determines that a product does not so qualify, the manager shall propose, by rule, that the product be excluded from the list referenced in paragraph (1)(b).
- (5)** Notwithstanding any other provision of the Eugene Code, 1971, this subsection shall govern challenges to the manager's determination to include a product on the list of prohibited "ozone-depleting products" referenced in paragraph (1)(b) of this section or to exclude any product covered by subsection (1) to (3) of section 6.710. Any person who commented on a proposed rule to include a product on, or to exclude a product from, the list of prohibited ozone-depleting products, and who is dissatisfied with the city manager's determination, may appeal that determination to a hearings official. The appeal shall be governed by section 2.021 of this code. The issue decided by the hearings official shall be limited to whether the city manager's determination is inconsistent with the criteria adopted by the city manager pursuant to this section.

(Section 6.725 enacted by Ordinance No. 19994 on December 7, 1994, effective January 7, 1995; and amended by Ordinance No. 20013, enacted on May 17, 1995, effective June 16, 1995.)

ENVIRONMENTAL NOISE DISTURBANCE

6.750 Environmental Noise Disturbance – Specific Prohibitions. Unless exempted by section 6.755 of this code, the following acts are declared to be noise disturbances, as that term is defined in section 4.080 of this code; however this enumeration shall not be deemed an exclusive list of the violations of this section, nor shall the recitation of specific prohibitions below be deemed the exclusive and entire listing of unlawful noise disturbances for each subcategory:

- (a) Exhausts. Discharging into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat, motor vehicle, or any mechanical device operated by compressed air or steam without a muffler or other device which will effectively prevent the emission of loud or explosive noises except where such discharge is from vehicles used for participation in vehicle spectator sports activities between the hours of 7 a.m. and 10 p.m., and the activities are properly licensed by the city and consistent with its zoning ordinance.
- (b) Idling engines. Operating for more than 15 consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between 10 p.m. and 7 a.m. the following day.
- (c) Loading, unloading, opening boxes. Loading or unloading any vehicle or opening, closing or destroying bales, boxes, crates and containers, between the hours of 10 p.m. and 7 a.m. the following day, so as to create a noise disturbance.
- (d) Construction or repair of buildings, streets, etc. Constructing (including excavating), demolishing, altering, or repairing any building, street, sidewalk, driveway, sewer or utility line between the hours of 7 p.m. and 7 a.m. the following day.
- (e) Pile drivers, hammers, leaf blowers lawnmowers, etc. Operating any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, leaf blower, or lawnmower between the hours of 9 p.m. and 7 a.m. the following day. No single powered leaf blower shall produce a noise level exceeding 70dBA measured at a distance of 50 feet. No powered leaf blower shall be operated within a 100-foot radius of another powered leaf blower simultaneously. On a single-family residential property, the 70 dBA at 50 feet restriction shall not apply if operated for fewer than 10 minutes during any consecutive sixty minute period.
- (f) Residential pumps, fans and air conditioners. Operating any heat pumps, residential fans, air conditioners, stationary pumps, stationary cooling towers, stationary compressors, or similar mechanical device or any combination thereof installed after [the effective date of this ordinance] so as to create any noise which would cause the maximum noise level to exceed 60 dBA at any point on the property line of the affected residential property.

- (g) Commercial and industrial noise. Operating any equipment and conducting activities so as to create any noise which would cause the maximum noise level to exceed a one-hour equivalent sound pressure level of 60 dBA at any point on the property line of an affected residential property zoned R-1, R-2, R-3 or R-4.
- (h) Steam whistles, sirens, and other aural warning devices. Operating or permitting the operation of a steam whistle, siren, or other aural warning device except where necessary to provide a warning of fire or danger.
- (i) Other. Any sound source exceeding the standards set out in section 9.2530(20) of this code and not otherwise exempt therefrom.

(Section 6.750 adopted by Ordinance No. 20378, enacted February 26, 2007, effective April 4, 2007.

6.755 Environmental Noise Disturbance – Exemptions, Variances.

- (1) Exemptions. The following sounds are exempted from the provisions of section 6.750 of this code:
 - (a) Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.
 - (b) Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that burglar or fire alarms shall not operate continuously for more than fifteen minutes.
 - (c) Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when in pursuit of an actual or suspected violator of the law.
 - (d) Sounds made by current employment of land and buildings for farm uses, i.e., for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, fur-bearing animals or honeybees, or the produce thereof, or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the preparation and storage of the products raised for man's use and animal use and disposal by marketing or otherwise by a farmer on such farm.
 - (e) Sounds produced by work performed by the city, county or state, and persons under contract with them for repairs or maintenance of roads, water wells, water service lines, trees and landscape, as well as street sweeping, garbage removal, and similar activities.
 - (f) Sounds produced pursuant to a specific variance granted by the Oregon Environmental Quality Commission, or by the city manager or hearings official under subsection (2) of this section.
 - (g) Sounds caused by sources regulated as to sound production by federal law or sounds caused by sources the regulation of which is preempted by state law.

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- (h) Sounds not electronically amplified, created by athletic and entertainment events other than motor vehicle racing events or fireworks displays.
 - (i) Electronically amplified announcements at athletic events other than motor vehicle racing events.
 - (j) The sounding of any horn or signaling device on an automobile, motorcycle, or other vehicle reasonably required by the exigencies of vehicular or pedestrian traffic.
 - (k) Sounds specifically authorized under a permit or license issued by the city.
 - (l) Sounds produced by leaf blowers and street sweepers being used to clean parking lots and adjacent areas in commercial or employment and industrial zones.
- (2) Variances. Any person who owns, controls, or operates any sound source which does not comply with section 6.750 of this code may apply to the city manager for a variance. As used herein, "city manager" includes a designee of the city manager.
- (a) Application. An application for a variance shall be in writing on a form provided by the city, contain the information required by the city manager, and be accompanied by a fee in an amount set under section 2.020 of this code. No application shall be considered received until all required information and the fee have been submitted.
 - (b) Public notification. The city shall give written notice of the application to any officially recognized neighborhood association in whose boundaries the sound source is located. The city shall also post written notice at the sound source location and provide copies of the notice to owners and occupants of properties located within 300 feet of the sound source location. The notice shall state the date by which the application will be considered, the nature of the variance to be considered, and where persons may file written comments regarding the application.
 - (c) Decision.
 1. The city manager shall grant or deny the variance within 14 days of receiving a complete variance application. The time for decision may be extended to 30 days if a public hearing on the application is held.
 2. The city manager may, on the city's manager's own motion, hold a public hearing on the application before deciding to grant or deny the variance.
 3. The city manager may grant a variance after considering the written application for variance, any written comments, and the applicant's compliance with variance conditions previously imposed. The variance may be granted by the city manager when it appears that compliance with the standards from which the variance is sought will produce

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unnecessary hardship to the applicant without equal or greater benefit to the public or that the purposes of the noise disturbance provisions can be served without a strict application thereof.

4. The city manager may impose limitations and conditions granting the variance in order to protect affected persons from the noise disturbance. A violation of any such condition or limitation shall constitute a violation of section 6.075 of this code and grounds for revocation of the variance.
5. A decision to grant or deny a variance shall be in writing and shall state the reasons for such decision. The city manager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.
6. The city manager may revoke a variance without a hearing upon finding that:
 - a. The applicant has provided false or misleading information, or omitted disclosure of a material fact, on the application or related material;
 - b. The applicant is operating the sound source in violation of this code or applicable local, state or federal law;
 - c. The applicant has violated a condition of variance approval; or,
 - d. New information shows that the permitted activity or device would endanger property or the public health or safety.
7. The action of the city manager in denying a variance application or in revoking an issued variance may be appealed in the manner provided by section 2.021 of this code. The decision of a hearings official on any such appeal is final. The action of the city manager in approving a variance may be appealed under the same procedures if such appeal can be decided in a timely way.

(Section 6.755 adopted by Ordinance No. 20378, enacted February 26, 2007, effective April 4, 2007; clerically corrected May 1, 2008; and amended by Ordinance No. 20528, enacted May 14, 2014, effective June 23, 2014.)

Miscellaneous

6.800 Junk and Used Vehicle Accumulations.

- (1) Except in an I-3 Heavy Industrial District no person shall store or permit to be stored used building supplies, scrap, junk, used furniture, used plumbing supplies or fixtures, used electrical supplies, fixtures or appliances in any manner as to expose it to view from a street or sidewalk adjoining the premises for a period of more than 30 days.
- (2) No person shall store or permit to be stored for 48 hours a used motor vehicle or portion thereof without a license plate or with an expired license plate on any private or public property unless the vehicle is placed so as not to be exposed to view from a street or sidewalk adjoining the premises or unless it is stored on the premises of a business enterprise dealing in used vehicles lawfully conducted within the city.
- (3) In addition to being a violation, the conditions prohibited by this section are also nuisances and may be abated as provided in this code.

(Section 6.800, formerly 6.500 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.805 Littering. No person shall throw or deposit or cause to be thrown or deposited any glass, metal, broken ware, dirt, timber, brush, rubbish, garbage, filth, or litter on public or private property except in such places as may be designated by the council.

(Section 6.805, formerly Section 6.505, renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.810 Prohibited Deposits in Millrace. No person shall put into the millrace in the city any filth, manure, sewage, deleterious or refuse matter of any kind.

(Section 6.810, formerly Section 6.510 renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.815 Obnoxious Vegetation - Definitions, Prohibitions, Abatement.

- (1) As used in sections 6.815 to 6.845, the term "obnoxious vegetation" includes:
 - (a) Weeds more than 10 inches high.
 - (b) Except agricultural crops that are not a fire hazard or a vision obstruction as defined in section 6.010(j), grass more than 10 inches high.
 - (c) Poison oak or poison ivy.
 - (d) Blackberry vines or vegetation that:
 1. Is a fire hazard because it is near other combustibles;
 2. Extends into a public way or a pathway frequented by children;
 3. Extends across a property line; or

4. Is used for habitation by trespassers.
- (e) Vegetation which is a vision obstruction as defined in section 6.010(j).
- (2) Except as section 6.820 provides to the contrary, between June 15 and September 30 of each year no owner or person in charge of undeveloped property may allow obnoxious vegetation to be on the property or in the public way abutting the property. Obnoxious vegetation so located is a public nuisance.
- (3) In accordance with sections 6.820 to 6.845:
 - (a) The city may abate the nuisance and
 - (b) The costs that the city incurs in the abatement plus a penalty may be charged against the owner or person in charge or against the property itself.

(Section 6.815, formerly Section 6.515 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 18199, enacted May 31, 1978, Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.820 Obnoxious Vegetation - Waiver. Where strict compliance with the requirements of section 6.815 would be impracticable as they apply to a type of obnoxious vegetation, to the height of weeds or grass, to height of tree branches, or to a part of a parcel of property, the director of public works may waive those requirements as they so apply.

(Section 6.820, formerly Section 6.517 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 18199, enacted May 31, 1978; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective 17, 1993.)

6.825 Obnoxious Vegetation - Notice.

- (1) Between May 1 and June 15 of each year the city recorder shall cause to be published three times in a newspaper of general circulation in the city a copy of section 6.815, as notice to all persons responsible for property of their duty to keep their undeveloped property free of obnoxious vegetation. The notice shall state that the city is willing to abate such a nuisance on any particular parcel of undeveloped property at the request of the owner or person in charge of the property, for a fee sufficient to cover the city's costs of such abatement. The notice shall also state that, even in the absence of such requests, the city intends to abate all such nuisances ten or more days after the final publication of the notice, and to charge the cost of doing so on any particular parcel of property plus a penalty to the person responsible or the property itself.
- (2) In addition to the published notice, the city recorder shall send by first class mail postage prepaid, a copy of the published notice to any person responsible for undeveloped property as shown on the Lane County tax rolls or upon records of the city. The failure to receive the mailed notice shall not relieve any person responsible from the

obligation to abate obnoxious vegetation or to pay the cost of abatement performed by the city.

(Section 6.825, formerly Section 6.519 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993; and amended by Ordinance 20113, enacted April 6, 1998, effective May 6, 1998.)

6.830 Obnoxious Vegetation - Private Abatement.

- (1) Within 10 days after the third publication of the notice for which section 6.825 provides, or as soon thereafter as a nuisance as defined in section 6.815 occurs, the person responsible for the property where such a nuisance occurs shall abate the nuisance, except as subsection (2) of this section provides to the contrary.
- (2) The person responsible for property who is apprehensive that vegetation on the property is likely to be allegedly in violation of section 6.815, or who denies that a nuisance as defined in that section exists on the property, may file with the finance officer a written protest denying that such a nuisance exists on the property. The city manager or his designate shall then determine whether the nuisance does so exist. That determination shall be final. If it is affirmative, the person responsible shall cause the nuisance to be abated within ten days after the determination.

(Section 6.830, formerly Section 6.521 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.835 Obnoxious Vegetation - Abatement by City; Penalty.

- (1) If, within the ten days allowed by section 6.830 for abating a nuisance as defined in section 6.815, the nuisance has not been privately abated, the city manager or his designate shall cause it to be abated.
- (2) The person authorized to cause, or retained to do, the abating may enter upon the property at reasonable times for purposes of investigating and abating the nuisance.
- (3) The finance officer shall keep an accurate record of the expense incurred by the city in abating the obnoxious vegetation and shall include therein a reasonable charge for administrative overhead.
- (4) Whenever the city abates obnoxious vegetation, in addition to any penalty judicially imposed and to the costs specified in subsection 6.835(3), there is hereby imposed on each parcel in separate ownership or contiguous parcels in single ownership, a penalty of \$50 or ten percent (10%) of the abatement costs, whichever is greater. The finance officer shall add the penalty to the amount to be collected as provided in section 6.840. The finance officer shall waive the penalty if the abatement costs are paid within the time specified in subsection 6.840(3).

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(Section 6.835, formerly Section 6.523 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.840 Obnoxious Vegetation - Collection of Costs.

- (1)** The finance officer, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:
 - (a) The total cost of abatement including administrative overhead and penalty.
 - (b) That the cost will be assessed and become a lien against the property unless paid within ten days from the date of notice.
 - (c) That if the cost is paid within the ten days the administrative penalty will be waived.
 - (d) That if the person responsible objects to the cost of abatement as indicated, he may file a written objection with the finance officer not more than ten days from the date of the notice and that the written objection must state the facts and reasons for the objection to the cost of abatement.
- (2)** The person responsible's written objection to the cost of abatement shall be reviewed by the city manager or the manager's designee, who shall determine the proper amount of the bill and give written notice to the person responsible of the amount so determined. That determination shall be final.
- (3)** Within ten days after receiving the bill, if no objection is filed, or within ten days after the determination following an objection, the person responsible shall pay the bill. If the costs of abatement are not paid within the ten days, the finance officer shall thereupon enter the costs of abatement plus the penalty in the docket of city liens. Upon such entry the amount shall constitute a lien upon the property from which the obnoxious vegetation was removed or upon the abutting property when the obnoxious vegetation was removed from the adjoining public way.
- (4)** The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate prescribed in section 2.022 of this code. The interest shall commence from date of the entry of the lien in the lien docket. For qualifying property owners the payment of the lien may be deferred, extended or modified as provided in sections 7.195 to 7.220 of this code.
- (5)** An error in the name of a person responsible shall not void the assessment and lien nor will a failure to receive the notices prescribed in sections 6.825 and 6.840 render the assessment void, but it shall remain a valid lien against the property.

(Section 6.840, formerly Section 6.525, added by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.845 Obnoxious Vegetation - Enforcement and Discharge of Duties. In case a duty under sections 6.815 to 6.840 bears on two or more persons, discharge of the duty by one of the persons shall discharge the duty for the other person and preclude any lien to enforce discharge of the duty from being imposed on the other person's property.

(Section 6.845, formerly Section 6.527 added by Ordinance No. 17073, enacted May 20, 1974; and renumbered by Ordinance No. 19939, enacted November 17, 1993, effective December 17, 1993.)

6.850 Plastic Bag Use - Definitions. For purposes of sections 6.850 to 6.865 of this code, the following words and phrases mean:

ASTM standard. The American Society for Testing and Materials (ASTM)'s International D-6400.

Carryout bag. Any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. "Carryout bag" does not include:

- (a) Bags used by consumers inside retail establishments to:
 - 1. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - 2. Contain or wrap frozen foods, meat, fish, whether packaged or not;
 - 3. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - 4. Contain unwrapped prepared foods or bakery goods; or
 - 5. Pharmacy prescription bags;
- (b) Laundry-dry cleaning bags or bags sold in packages containing multiple bags intended for use as garbage waste, pet waste, or yard waste bags;
- (c) Product bags.

City sponsored event. Any event organized or sponsored by the city or any department of the city.

Customer. Any person obtaining goods from a retail establishment or from a vendor.

Food provider. Any person in the city that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.

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Grocery store. Any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items and includes supermarkets, convenience stores, and gasoline stations.

Pharmacy. A retail use where the profession of pharmacy by a pharmacist licensed by the state of Oregon's Board of Pharmacy is practiced and where prescription medications are offered for sale.

Product bag. Any bag provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point of sale within the retail establishment. A product bag is not a carryout bag.

Recyclable paper bag. A paper bag that meets all of the following requirements:

- (a) Is 100% recyclable and contains a minimum of 40% recycled content;
- (b) Is capable of composting consistent with the timeline and specifications of the ASTM Standard as defined in this section.

Retail establishment. Any store or vendor located within or doing business within the geographical limits of the city that sells or offers for sale goods at retail.

Reusable bag. A bag made of cloth or other material with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

- (a) If cloth, is machine washable; or
- (b) If plastic, has a minimum plastic thickness of 4.0 mils.

Vendor. Any retail establishment, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the geographical limits of the city, which provides perishable or nonperishable goods for sale to the public.

Single-use plastic carryout bag. Any plastic carryout bag made available by a retail establishment to a customer at the point of sale. It does not include reusable bags, recyclable paper bags, or product bags.

Undue hardship. Circumstances or situations unique to the particular retail establishment such that there are no reasonable alternatives to single-use plastic carryout bags or a recyclable paper bag pass-through cannot be collected.

(Section 6.850 added by Ordinance No. 20498, enacted October 22, 2012, effective November 29, 2012, with enforcement to begin after April 29, 2013.)

6.855 Plastic Bag Use - Regulations. Except as exempted in section 6.865 of this code:

- (a) No retail establishment shall provide or make available to a customer a single-use plastic carryout bag;
- (b) No person shall distribute a single-use plastic carryout bag at any city facility, city managed concession, city sponsored event, or city permitted event.

(Section 6.855 added by Ordinance No. 20498, enacted October 22, 2012, effective November 29, 2012, with enforcement to begin after April 29, 2013.)

6.860 Plastic Bag Use - Cost Pass-Through. When a retail establishment makes a recyclable paper bag available to a customer at the point of sale pursuant to section 6.865(b) of this code, the retail establishment shall:

- (a) Charge the customer a reasonable pass-through cost of not less than 5 cents per recyclable paper bag provided to the customer; and
- (b) Indicate on the customer's transaction receipts the total amount of the recyclable paper bag pass-through charge.

(Section 6.860 added by Ordinance No. 20498, enacted October 22, 2012, effective November 29, 2012, with enforcement to begin after April 29, 2013.)

6.865 Plastic Bag Use - Exemptions. Notwithstanding sections 6.855 and 6.860 of this code:

- (a) Single-use plastic carryout bags may be distributed to customers by food providers for the purpose of safeguarding public health and safety during the transportation of hot prepared take-out foods and prepared liquids intended for consumption away from the food provider's premises.
- (b) Retail establishments may distribute product bags and make reusable bags available to customers whether through sale or otherwise.
- (c) A retail establishment shall provide a reusable bag or a recyclable paper bag at no cost at the point of sale upon the request of a customer who uses a voucher issued under the Women, Infants and Children Program established in the Oregon Health Authority under ORS 413.500.
- (d) Vendors at retail fairs such as a farmers' market or holiday fair are not subject to indicating on the customer's transaction receipt the total amount of the recyclable paper bag pass through charge required in section 6.860(b) of this code.
- (e) The city manager or the designee may exempt a retail establishment from the requirement set forth in sections 6.855-6.860 of this code for a period of not more than one year upon the retail establishment showing, in writing, that this code would create an undue hardship or practical difficulty not generally applicable to other persons in similar

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circumstances. The decision to grant or deny an exemption shall be in writing, and the city manager's or designee's decision shall be final.
(Section 6.865 added by Ordinance No. 20498, enacted October 22, 2012, effective November 29, 2012, with enforcement to begin after April 29, 2013; administratively corrected on January 25, 2013.)

Penalties

6.990 Penalties - Specific.

- (1) Any person who willfully fails to present the designated vehicle to the police department within the time specified in section 6.220, or willfully fails to present evidence that the vehicle shall no longer be operated on a public way in the city, shall upon conviction be punished by fine of not to exceed \$100.00.
- (2) Violation of section 6.255 is punishable by a minimum fine of \$50.00 to a maximum fine of \$500.00 for each day that the violation exists. this penalty is cumulative and in addition to any other remedy available to the city.
- (3) Violation of section 6.305 to and including section 6.310 is punishable by a fine of a minimum of \$100.00 to a maximum of \$4,000.000 for each tree removed, or confinement in jail not to exceed 100 days, or both fine and imprisonment. In addition, the city attorney, upon request of the city manager, shall institute any necessary legal proceedings to enforce the provisions of sections 6.305 and 6.310 of this code.
- (4) Any person who violates any provision of sections 6.501 to 6.596 of this code or any provision of a discharge permit shall be liable civilly to the city in a sum not less than \$1,000 nor more than \$2,500 for each day in which such violation occurs.
- (5) Any person who knowingly:
 - (a) Violates sections 6.501 to 6.596 of this code or any provision of a discharge permit, or
 - (b) Makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to sections 6.501 to 6.596 of this code or a discharge permit or falsifies, tampers with or renders inaccurate any monitoring device or method required under sections 6.501 to 6.596 of this code or a discharge permit, shall, upon conviction, be punished by a fine of not less than \$1,000 nor more than \$2,500 or 30 days in jail, or both, for each day in which such violation occurs.
- (6) The remedies provided for in sections 6.586 and 6.596 of this code and subsections (5) and (6) of this section shall be cumulative and not exclusive and shall be in addition to any and all other remedies the city may have pursuant to this code or in any other manner provided by law.
- (7) Any person who violates section 6.375 of this code by continuing construction after receiving a stop work order shall be subject to civil penalties not to exceed \$500 per day.
- (8) Any person who intentionally, knowingly, or recklessly releases, or causes to be released, hazardous substances in violation of section 6.355 of this code shall be subject to a criminal penalty not to exceed one year in jail and a fine of \$2,500, or a civil penalty not to exceed

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\$5,000 per day. Such penalties shall be in addition to, and not in lieu of payment for removal action costs.

- (9) Any person who violates section 6.360 of this code by failing to report a release or the discovery of contamination as a result of a previous release shall be subject to civil penalties not to exceed \$5,000 per day.
- (10) Violation of sections 6.625 to and including section 6.645 is punishable by a fine of up to \$2,500 per day per violation.
- (11) A person who causes a nuisance as declared in subsection 6.010(m) to come into existence on public property or private property, shall be punished upon conviction by a fine not to exceed \$750 or confinement in jail not to exceed 30 days, or both such fine and imprisonment. In addition to, or in lieu of such fine and/or imprisonment, the court may order the person responsible to pay restitution in the amount of the costs incurred in abating the nuisance and/or perform community service as determined by the court.
- (12) Any person who violates a provision of section 6.230 or 6.235, or a business, owner, or employer who permits a violation of sections 6.230 or 6.235 of this code to occur, shall, upon conviction, be punished by a fine of:
 - (a) Not less than \$50, nor more than \$100 for the first violation;
 - (b) Not less than \$100, nor more than \$200 for the second violation occurring within a period of 12 months from the first violation;
 - (c) Not less than \$250, nor more than \$500 each for the third and subsequent violations occurring within a period of 12 months from the first violation.

The above penalties are in addition to, and not in lieu of, any administrative civil penalties that may be imposed or other remedies the city may have under this code or other laws or regulations.

(Section 6.990 amended by Ordinance No. 17073, enacted May 20, 1974, Ordinance No. 18721, enacted November 12, 1980, Ordinance No. 18779, enacted April 22, 1981, Ordinance No. 19130, enacted April 13, 1983; Ordinance No. 19791, enacted July 8, 1991; Ordinance No. 19815, enacted December 2, 1991; and Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992; administratively amended by Ordinance No. 19939 and 19940, enacted November 17, 1993, effective December 17, 1993; amended by Ordinance No. 20067, enacted October 16, 1996, effective November 15, 1996; Ordinance 20165, enacted August 11, 1999, effective September 10, 1999; Ordinance No. 20212, enacted September 25, 2000, effective October 26, 2000; Ordinance No. 20338, enacted March 4, 2005, effective April 3, 2005; Ordinance No. 20346, enacted and effective May 25, 2005; and Ordinance No. 20349, enacted and effective October 10, 2005, and repealed December 31, 2005.)

6.992 **Penalties - General.** Violation of any other section in this chapter is punishable by fine not to exceed \$200.00.

(Section 6.992 added by Ordinance No. 19815, enacted December 2, 1991.)

6.995 Administrative Civil Penalty.

- (1)** In addition to, and not in lieu of any other enforcement mechanism authorized by this code, upon a determination by the city manager or his/her designee that a person has violated a provision of this chapter, the city manager or designee may impose upon the violator and/or any other responsible person an administrative civil penalty as provided by section 2.018 of this code. For purposes of this subsection, responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, the owner as well.
- (2)** In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to subsection (1) of this section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or licenses.

(Section 6.995 added by Ordinance No. 19719, enacted October 8, 1990 with an effective date of October 17, 1990, set by Ordinance No. 19722.)

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