Chapter 7

PUBLIC IMPROVEMENTS

7.005 **City Engineer - Defined**. For purposes of this Code the city engineer shall be the person so designated by the city manager.

(Section 7.005 amended by Ordinance No. 19653 enacted November 22, 1989, effective May 22, 1990.)

7.007 **Rules and Regulations**. The city engineer may adopt such rules and regulations as are necessary for him/her to perform the duties required by this chapter and to protect the public health, safety and welfare.

(Section 7.007 added by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.010 **Definitions**. For purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section:

Access connection. The area located within the public right-of-way that provides for the movement of vehicles to or from a development site onto and from the vehicular travel way of the public transportation system.

Access connection spacing. The distance between connections, measured from the closest edge of pavement of the first connection to the closest edge of pavement of the second connection along the edge of the traveled way.

Access ramps. The sloped area and landing immediately adjacent to the public way that allows access to the public way by individuals with disabilities under the American with Disabilities Act ("ADA").

Bancroft Bonding Act. ORS 223.205 and 223.210 to 223.295 or any succeeding statutory provisions or amendments thereto.

Building official. The person designated by the city manager to carry out the duties of the city's building official under this code, or the building official's designee.

Capital improvement(s). Public facilities or assets used for any of the following:

(a) Water supply, treatment and distribution;
(b) Wastewater, including collection, transmission, treatment and disposal;
(c) Stormwater, including pollution reduction, drainage and flood control;
(d) Transportation, including but not limited to streets, sidewalks, bike paths, traffic signals and control devices, street lights, street trees,

public transportation, vehicle parking, and bridges; or

(e) Parks and recreation, including but not limited to**,** mini-neighborhood parks, neighborhood parks, community parks, and other recreational facilities.

Conflict point. The point of potential collision where vehicle paths cross, merge into or diverge with one another, pedestrians or bicycles.

Controlled Intersection. An intersection that has a traffic signal.

Cul-de-sac. A dead-end street intended for local traffic that terminates with a bulb or other turnaround for use by appropriate vehicles, including emergency vehicles.

Department. The public works department or such other department of the city designated by the city manager.

Development. Only as used in sections 7.700 to 7.740, means conducting a building or mining operation, or making a physical change in the use or appearance of a structure or land, which increases the need for additional capital improvements.

Development permit. Only as used in sections 7.700 to 7.740, a permit approved and/or issued by the public works department for the purpose of development within public ways.

Development site. A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record.

Driveway. The area located outside of the public right-of-way that abuts the access connection and allows for vehicles to move to or from a development site. For purposes of the S-JW Jefferson Westside Special Area Zone provisions at EC 9.3600 through 9.3640, a surface area that is intended, prepared, or used for vehicle access to and about a lot.

Duplex. A building designed or used as dwellings for 2 families living independently of each other and having separate housekeeping facilities for each family that are connected either by common walls or common ceiling/floor connection. A building is not a duplex if one of the dwellings is a secondary dwelling.

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

Easement. A grant of one or more property rights by a property owner to or

for use by the public, or another person or entity.

Flood control design storm. A theoretical storm for evaluating the capacity of the storm drainage system and designing improvements for the required level of protection, in accordance with the Design Standards for Stormwater Facilities in Public Improvement Projects.

Franchisee. Any person using the public way under authority of a special ordinance granting that person the privilege of using the public way for a fee and upon conditions.

Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to section 7.705.

Intersection influence area. That area beyond the physical intersection of two rights of way that comprises the upstream decision and maneuver distance, plus any required vehicle storage length, and the downstream recovery distance of the primary street, and the protected corner clearance distance of the secondary street.

Local improvement. Any project or service or part thereof undertaken by the city where all or part of the costs are borne by local assessments levied against parcels of real property which provides a special benefit only to specific parcels or rectifies a problem caused by specific parcel(s). Such local improvements may include, but are not limited to, a street, sidewalk, street light, underground utility, wastewater or storm sewerage facility, water utility facility, off-street motor vehicle parking facility, flood control facility, park, playground or neighborhood recreation facility.

Owner. An individual, association, partnership or corporation having legal or equitable title to land other than legal title held only for purposes of security. For the purposes of notice, the owner may be determined using the latest Lane County assessment roll.

Partially controlled intersection. An intersection that has one or more stop signs or yield signs.

Primary street. The street with the higher street classification of two intersecting streets.

Public improvement. Any improvement which upon construction and acceptance by the city shall become the city's asset and responsibility to maintain, repair or replace. Public improvement includes but is not limited to a local improvement or other structure or facility constructed upon or under a public way or private property.

Public way. Any street, road, alley, right-of-way, pedestrian or bicycle easement, storm drainage easement, wastewater or sanitary sewer easement or other utility easement for public use which is controlled by the city, county or state.

Qualified public improvements. A capital improvement that is:

(a) Required as a condition of development approval;

(b) Identified in the plan adopted pursuant to subsection 7.715(2); and either

(c) Not located on or contiguous to property that is the subject of development approval (See subsection 7.730(1) for definition of "contiguous."); or

(d) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related. (See subsection 7.730(1) for definition of "contiguous.")

Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 7.705, for which the city determines that capacity exists.

Residential Assessment Unit. A unit of measure, for purposes of assessing residential property for street improvement under chapter 7 of this code, equivalent to the uniform benefit of a property developed with a single-family dwelling, duplex or triplex.

Restricted movement access connection. An access connection that is designed to prevent certain turning movements of vehicles traveling to or from the public right of way.

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

Secondary street. The street with the lower street classification of two intersecting streets.

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

Sidewalk. The improved part of a street right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines that is intended for pedestrian use.

Stormwater. Water runoff that originates as precipitation on a particular site, basin, or watershed.

Stormwater management facility. 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, manholes, catch basins, ponds, open drainage ways, runoff control facilities, wetlands, and their accessories.

Street light. Fixed lighting of the public right of way for both vehicles and pedestrians.

Street tree. A living, standing tree with a trunk diameter or, for trees with multiple trunks, a cumulative trunk diameter, of at least at least 1-1/2 inches at a point six inches above mean ground level at the base of the trunk, and that is located within the public street right-of-way, or shown on an approved street tree plan.

Systems development charge. A reimbursement fee, an improvement fee or a combination thereof imposed or collected at any of the times specified in section 7.720. It shall also include that portion of a wastewater sewer or storm sewer connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with wastewater sewer facilities and stormwater sewer facilities.

Warranty period. The period of time set forth in the permit that follows construction and City-acceptance of a privately engineered public improvement during which the permittee must take all actions necessary to maintain said improvement and make all needed repairs or replacements.

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

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

Water quality design storm. A theoretical storm for estimating the amount of stormwater runoff to be treated. Facilities designed to store and treat a volume of stormwater shall be sized in accordance with the Design Standards for Stormwater Facilities in Public Improvement Projects.

(Section 7.010 amended by Ordinance No. 18708, enacted September 22, 1980; Ordinance No. 19342, enacted July 17, 1985, effective August 17, 1985; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19482, enacted June 10, 1987; Ordinance No. 19653 enacted November 22, 1989, effective May 22, 1990; Ordinance No. 19733, enacted May 13, 1991, effective July 1, 1991; Ordinance No. 19784, enacted June 24, 1991, effective July 24, 1991; Ordinance No. 19835, enacted April 13, 1992, effective July 1, 1992; Ordinance No. 19827, enacted February 10, 1992, effective August 10, 1992; Ordinance No. 19939, enacted November 17, 1993, effective December 17 1993; Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996; Ordinance No. 20166, enacted

September 15, 1999; Ordinance No. 20177, enacted November 8, 1999, effective December 8, 1999; Ordinance No. 20236, enacted November 26, 2001, effective December 26, 2001; Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002; Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

Local Improvements

7.085 Standard Specifications, Drawings and Design Standards.

(1) The city engineer shall prepare standard specifications, drawings and design standards for construction, reconstruction or repair of public improvements to be constructed within areas under the city's jurisdiction to be kept on file in the city engineer's office.

(2) All public improvements and city maintained stormwater facilities shall be consistent with sound engineering principles and constructed in accordance with drawings and design standards and standard specifications and plans adopted by the city, including but not limited to the Public Improvement Design Standards Manual.

(3) All engineering and inspections on public improvements and private stormwater facilities to be accepted by the city for maintenance shall be done by the city unless otherwise specified by this code.

(Section 7.085 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653 enacted November 22, 1989, effective May 22, 1990; Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996; Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.087 Lines, Corners and Bench Marks.

(1) Upon council request, the city engineer shall ascertain all lines and corners of lots, blocks and streets and keep a record of them.

(2) The city engineer shall place bench marks on all lines run with a level for establishing streets, grades, levels, sewer and drains.

7.090 Temporary Work.

(1) Temporary traffic control plans shall be submitted and approved by the public works department before development permits are issued for work within a public way.

(2) Construction activities shall not impede safe and accessible pedestrian and bicycle movement. Where construction activities block public sidewalks, an alternate route that meets ADA requirements for accessibility and includes access ramps and other accessible features shall be provided.

(3) Temporary events and facilities such as street fairs, parades, and vending carts must meet accessibility criteria.

(4) Temporary road signage shall not encroach on the accessible passage or headroom.

(Section 7.090 added by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.095 Closing Street During Construction.

(1) Whenever new construction work or repair work is under way upon a street or part of a street, the contractor or person directly in charge of

the construction or repair work, with the consent of the designated city official, may close the street or part of a street to public traffic whenever the street, by reason of the construction work or repair work, is made dangerous for public traffic. They may also close the street or part of a street to public traffic, whenever such closing is necessary to properly carry on the work of construction or repair, and the street or part of a street shall remain closed during the period of work.

(2) Whenever a street or a part of a street is closed, the contractor or person directly in charge of the work shall construct and maintain at either end of the construction work and other places as the city may direct, proper and suitable barriers and No Parking signs and legend approved by the traffic engineering division of the city, 24 hours in advance of the proposed closure notifying the public of the construction work, and that the street or part of a street is closed to public traffic and closed to parking. In the event a motor vehicle shall be found standing or parked within the street or part of a street 24 hours after the posting of the barriers and signs, in violation and contrary to the provisions of this section, the motor vehicle shall be given a citation and may be impounded under sections 5.695 and 5.697, and the administrative rules issued thereunder.

(3) When a street is closed, no person shall remove, break down, ride or drive over any barrier erected as provided in this code or travel over the street with a vehicle, bicycle, animal, or on foot on a part of the street where work is being performed.

(4) Whenever a street or streets are to be closed for the purposes of moving buildings or other associated type moves, the contractor, or person directly in charge of the moving operation shall post "No Parking" signs and legend approved by the department 24 hours in advance of the proposed closure, notifying the public of the moving operation and that the street or streets are closed to public traffic and public parking. When the signing is completed the department shall inspect the street or streets to be closed and determine if the proper signs have been posted in compliance herewith. In the event that a motor vehicle shall be found standing or parked within the street or streets 24 hours after the posting of the signs, in violation and contrary to the provisions of this section, the motor vehicle shall be given a citation and may be impounded under sections 5.695 and 5.697, and the administrative rules adopted thereunder.

(Section 7.095 amended by Ordinance No. 16712, enacted February 12, 1973; Ordinance No. 19393, enacted July 28, 1986; Ordinance 20023, enacted September 18, 1995, effective October 18, 1995; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.100 **Traffic Control Devices, Signing, Etc. for Construction and Maintenance on Streets**. The document entitled Oregon Temporary Traffic Control

Handbook (Oregon Department of Transportation, May, 2006 edition) is adopted and shall be in effect until the city engineer adopts a replacement. The city engineer may require additional traffic control devices as deemed appropriate to protect the public. The city engineer is authorized to adopt a different document addressing the same subjects if the engineer finds that a different document is more up-to-date, consistent with state standards or otherwise provides better standards for temporary traffic control.

(Section 7.100 amended by Ordinance No. 16749, enacted April 9, 1973; Ordinance No. 18776, enacted April 15, 1981, and Ordinance No. 19393, enacted July 28, 1986; amended by Ordinance No. 20236, enacted November 26, 2001, effective December 26, 2001; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.105 Compliance with Manual Required. No person performing work on any public way shall violate any of the requirements of section 7.100.

(Section 7.105 added by Ordinance No. 16749, enacted April 9, 1973, and amended by Ordinance No. 19393, enacted July 28, 1986.)

7.125 Local Improvements - Deadlines.

(1) Petitions for local improvements that are filed on or before January fifteenth of the year for which the improvement is requested to be constructed will be considered by the city engineer for construction in that year. Petitions received after January fifteenth may be considered for that year or may be deferred to the following year, at the city engineer's discretion.

(2) Except for construction of local improvements in unincorporated areas that the council has authorized, prior to petitioning for a local improvement, the area shall be annexed to the city and also shall have filed for any required land use approvals. A petition shall not be considered for current year construction unless the area has filed a final plat approval on or before January fifteenth of the year in which the construction is to be accomplished, unless the city engineer, in the engineer's discretion, determines that there is sufficient time to process the petition despite later plat approval.

(3) Acceptance of a petition for local improvements is governed by section 7.160 of this code.

(Section 7.125 amended by Ordinance No. 19393, enacted July 28, 1986, effective, January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and Ordinance No. 20236, enacted November 26, 2002, effective May 22, 2002.)

7.130 Construction of Public Improvements - Engineering and Inspection Fees.

(1) The city engineer shall charge a fee set pursuant to section 2.020 of this code to cover the costs, including overhead, of engineering, inspection and review services performed by the city on all private or public improvements not engineered by the city.

(2) Prior to establishing the warranty period for a privately engineered and

constructed public improvement project, the city manager shall establish a refundable fee set pursuant to section 2.020 of this code to cover the construction costs of unfinished public improvements shown on the approved plans, including but not limited to access ramps and street lights. The fee shall be released following the construction of the public improvements.

(3) If the fees have not been paid at the time the services are rendered, the city engineer or finance officer shall bill the recipient of the services monthly or at less frequent intervals if the city determines the amount of the billing does not justify more frequent billing.

(4) A person subject to such fees may object to the basis for the fees or the amount of the fees to the city manager by filing a written appeal within 10 days of the date of the invoice. Except for the time to appeal, the appeal shall follow the procedures described in section 2.021 of this code. The city engineer or finance officer and the appellant may resolve the appeal informally at any time.

(5) If there is no objection to the fees, they shall be due and payable in full within 20 days of the date of the invoice. If an appeal is filed, the fees are due and payable 10 days after the hearings official issues the final decision on the appeal. If not paid when due, the amount due shall accrue interest from the date of billing at the rate established under section 2.022 of this code.

(6) If the fees are not paid on or before the date they are due and payable, the city engineer may do any or all of the following:

(a) Without further notice, issue a stop work order on the public improvement, which order may remain in force until the fees are paid or the recipient of services provides a bond or other reasonable security to assure payment of the fees;

(b) Establish a lien against the benefitted property, with interest to accrue as provided in this section. Such lien shall neither be deferred under section 7.200 nor paid in installments except as authorized under section 2.582;

(c) Collect the sum due to the city by any other means authorized by law or by a combination of such means and by one or more of the remedies listed in this subsection.

(d) Decline to provide engineering, inspection and review service to the same owner or applicant for another improvement project.

(Section 7.130 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance No. 20236, enacted November 26, 2002, effective May 26, 2002; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.140 <u>Construction of Public Improvements – Permit Required and Preparation of Plans by an Engineer</u>.

(1) Prior to the construction of any privately engineered public improvement a person must obtain a permit from the city engineer.

Permits shall be issued in accordance with the Public Improvement Design Standards Manual.

(2) A person may, at the person's expense, employ a licensed engineer to prepare the plans for a public improvement. The original plan based on drafting and design standards set by the city engineer shall be delivered to the city engineer for review and approval before construction may begin. No prints or transparencies shall be accepted and the plans submitted shall be retained by the city.

(3) The cost of public improvements constructed under this section are not eligible for financing as local improvement assessments under sections 7.175 to 7.200.

(4) If a privately engineered public improvement receives any direct or indirect city funding the project must comply with applicable public contracting requirements.

(Section 7.140 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance 20056, enacted August 5, 1996, effective September 4, 1996; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.143 Public Improvement Construction – Wastewater Sewer Systems and Stormwater Management Facilities.

(1) Unless physical constraints prevent construction or unless adjoining properties are outside the service basin, all public improvements to unimproved public ways not already containing a wastewater sewer system must include a wastewater sewer system constructed in accordance with section 7.085 of this code.

(2) All public improvements to public ways must include stormwater management facilities that are constructed in accordance with the Design Standards for Stormwater Facilities in Public Improvement Projects. Capacity of the stormwater management facilities shall be sized in accordance with the flood control design storm. The pollution reduction facilities must treat all stormwater runoff from all new or replaced impervious surface exceeding 1000 square feet, or an equivalent on-site area, that will result from the water quality design storm.

(Section 7.143 added by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.145 Construction of Public Improvements – Performance and Warranty.

(1) Except for sidewalk projects required under sections 7.152 to 7.156 and for work authorized under sections 7.290 to 7.308, before commencing construction of any public improvement a person shall file with the city engineer a good and sufficient bond in an amount equal to the estimated cost of the improvement, guaranteeing to the city that the improvement shall in all ways comply with the plans and specifications approved by the city engineer and that the improvement

will be installed using first-class material and in a first-class, professional manner under the direction of the city engineer, and that the improvement will be free from defects or need of repair for a period of at least one year from the completion of the improvement and that guarantees payment of any fees charged under section 7.130.

(2) In lieu of a bond, a financial guarantee as approved by the city engineer in an amount equal to 125% of the estimated cost of the improvement may be used to secure the construction permit and finance the construction a privately engineered public improvement. Twenty-five percent of the construction cost, or $25,000.00, whichever is more, shall be secured by the city prior to establishing the warranty period and retained in place throughout the warranty period.

(Section 7.145 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; and amended by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.148 **Culverts - Repair, Reconstruction, Removal**.

(1) The owner of property abutting or adjoining a public way in which a culvert is located which the city has not accepted for maintenance shall maintain the culvert in safe condition and good repair.

(2) If in the judgment of the city engineer a culvert not accepted for maintenance by the city is causing an accumulation of storm water which is imminently dangerous to human life or property, the city engineer may proceed without notice to the owner of abutting property to summarily remove the culvert and assess the cost of the removal to the person responsible as provided in section 6.110 of this code.

(Section 7.148 added by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

7.152 **Sidewalks and Culverts - Repair and Reconstruction - Notice**. If the city engineer determines that a sidewalk or culvert abutting property is to be repaired or reconstructed, a notice shall be sent to the owner of the property by first-class mail at the owner's address as known to the city engineer, or if not so known, as indicated on current records of the county assessor. The notice shall state the repair or reconstruction required, the time limit as specified in section 7.154 for complying with the requirement, and state that the cost shall be borne in accordance with section 7.153 or 7.154.

(Section 7.152 added by Ordinance No. 17954, enacted April 11, 1977, and amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.153 **Sidewalks and Culverts - Repair and Reconstruction - Privilege of Property Owner**. The owner upon securing a permit in accordance with sections 7.290 through 7.308 may cause the repair or reconstruction to be

effected at the owner's own cost subject to the requirements of the city engineer.

(Section 7.153 amended by Ordinance No. 17954, enacted April 11, 1977, and Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.154 **Sidewalks and Culverts - Repair and Reconstruction - Charges**. If the owner does not obtain the permit required by sections 7.290 to 7.308 within 20 days after the date of the notice or does not do the necessary repair or reconstruction as authorized by section 7.153 within 20 days after receiving the permit, the city engineer may cause the repair or reconstruction to be performed either with city forces or by private contract. If the work is performed by city forces, the owner shall be charged at a rate established by the city manager pursuant to section 2.020 of this code which shall cover the costs of the work, including supervision, inspection, billing, overhead, and whatever additional costs any extraordinary aspect of the work entails. If the work is performed under private contract, the owner shall be charged the amount actually paid to the contractor, plus a charge for supervision, inspection, billing, interest on warrants and overhead, as established by the city manager pursuant to section 2.020 of this code. The finance officer may collect the cost of the work plus interest thereon as provided in section 2.022 of this code from the owner, or proceed, in accordance with section 6.100 to cause the cost of the repair or reconstruction to be assessed against the property, and made subject to interest and to lien and foreclosure. Payment of the lien may be deferred, extended or modified as provided in section 7.195.

(Section 7.154 added by Ordinance No. 17954, enacted April 11, 1977, and Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and amended by Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990.)

7.155 **Sidewalks - Construction; Initiation and Notice**.

(1) Except when specific reference is made thereto, the procedures in sections 7.155 to 7.157 are in addition to and separate from the procedures in sections 7.160 to 7.180.

(2) Upon motion of the council or upon a determination by the city engineer that the public health, safety and welfare require the construction of sidewalks in a particular location, or that 50 percent or more of the front footage of the properties abutting one side of a street in a city block have installed sidewalks, the city engineer may cause ten days prior written notice to be mailed to the owners of affected property containing the information required in subsection 7.155(3).

(3) The notice required by this section shall:

(a) Identify if the council or city engineer determined the need for the proposed sidewalk;

(b) Describe the location of the sidewalk and the property to be assessed for the installation of the sidewalk if the owner fails to construct the sidewalk as ordered;

(c) Specify that all sidewalk construction shall meet city plans and specifications;

(d) Specify the time and place where the council or its designee shall take oral or written testimony regarding the proposed sidewalk construction;

(e) State that after the testimony is received the council shall determine if the proposed sidewalk shall be constructed, shall be modified and constructed, or shall be postponed;

(f) Advise the owners of affected property that if a sidewalk is ordered to be constructed, the property owner will have 20 days in which to obtain a permit under sections 7.290 to 7.308 and if the sidewalk is not constructed within 20 days from the issuance of the permit, the city will cause the work to be done and the cost of the work including but not limited to the cost of construction, inspection, supervision, interest on warrants, collection and overhead will be assessed against the property creating a lien which may be foreclosed.

(4) The city engineer shall initiate the construction of sidewalks along streets where standard sidewalks do not exist within or immediately adjacent to lots which have been subdivided or partitioned on or after January 1, 1994. Notice as provided for in this section shall be given on or after the date five years following the approval date of the subdivision or partition. The city engineer may give notice prior to this time if over 70 percent of the lots within the subdivision or partition are developed and, if, upon the determination of the city engineer, the remaining undeveloped lots will not likely be developed within a reasonable time. The city manager or designee may waive the requirement for sidewalk construction as provided in subsection 7.385(3) of this code.

(Section 7.155 added by Ordinance No. 17954, enacted April 11, 1977, amended by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19946, enacted December 6, 1993, effective June 6, 1994; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.156 Sidewalks - Construction - Hearing and Order.

(1) The council or its designee shall take oral or written testimony at the time and place specified in the notice sent under section 7.155. If the testimony is taken by the council's designee, the designee may request additional information from the city engineer before making the designee's recommendation to the council. The council by resolution may order, modify and order, or postpone construction of the proposed sidewalk.

(2) If the council has ordered construction of the sidewalk the owner of the affected property shall have 20 days from the date of written notice of the council's order to obtain the permit required by sections 7.290 to 7.308 and 20 days from the issuance of the permit to construct the

sidewalk as ordered. The notice shall advise the owner of the affected property of the provisions of section 7.157.

(Section 7.156 amended by Ordinance No. 17954, enacted April 11, 1977, and Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.157 **New Sidewalk Construction - Enforcement and Lien**. If the sidewalk is not constructed within the time set in subsection 7.156(2), the city engineer shall proceed to construct the sidewalk with city forces or by contract. The cost of constructing the sidewalk plus all inspection, supervision, collection and overhead costs shall be assessed against the affected property and collected as provided in sections 7.185 to 7.190, 7.195 and 7.225.

(Section 7.157 added by Ordinance No. 17954, enacted April 11, 1977, and amended by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.160 **Local Improvements - Initiation**.

(1) As used in this section "petitioner" means an owner and if the owner is a partnership or corporation it includes any person, partnership or corporation with 20% or more ownership interest in the petitioning partnership or corporation.

(2) The council may from time to time establish a policy regarding acceptance of petitions to construct local improvements to serve property. In establishing the policy, it shall consider:

(a) The city's acknowledged land use designation for the area to be served and the impact of the development of the area on the goals of the community;

(b) The credit rating of the city and its ability to retire existing bond obligations using payments from the owners of previously assessed property;

(c) The level of petitioner's investment in local improvements being constructed to serve the area;

(d) The availability of private capital or other means to finance local improvements to undeveloped property;

(e) The payment history of petitioners on other local improvement assessments;

(f) Any other factors the council deems significant.

(3) Except as directed to the contrary by council policy adopted pursuant to subsection 7.160(2), under this section the city engineer shall not approve a petition for construction of local improvements to serve residentially zoned undeveloped property until the petitioner:

(a) Is current on all obligations imposed by this chapter on the petitioner and on real property in which the petitioner holds legal title or an equitable interest; and

(b) Provides the city engineer with reasonable assurance that upon completion of the plans and specifications for the petitioned improvements, petitioner shall deposit with the city finance officer sufficient funds to keep the estimated assessments against

petitioner's real property equal to or less than the real property's assessed value as determined by the Lane County Assessor.

(4) A person desiring to construct or to have a local improvement constructed shall first file a petition with the city engineer on forms provided by the city engineer.

(a) A petition for a local improvement to be constructed by the petitioner at the petitioner's expense may be approved by the city engineer upon petitioner's compliance with the applicable provisions of this chapter. The city engineer shall present to the council petitions for local improvements to be financed in any part by assessments against specially benefitted property. Such petitions may be presented singly or in a project group at the time requested by the petitioner, by the council or by the city engineer, whichever first occurs.

(b) Notwithstanding paragraph (a) of this subsection and subsection (8) of this section, the city engineer may reject a petition for a local improvement if, in the city engineer's judgment, the cost to other properties that would be included in the local improvement district or the cost to the city for non-assessable components of the improvement is excessive in relation to the benefits to be conferred by constructing the improvement, if the city lacks funds or resources for the proposed improvement because they are committed to other improvement projects that have a higher priority, or if the proposed improvement would likely conflict with another improvement project that is in process. A person whose petition is rejected by the city engineer may submit to the council a written request that the council review the city engineer's decision. If the council chooses to conduct such a review, it shall consider the petitioner's written statement and the city engineer's explanation of the reasons for the decision. The council may affirm the city engineer's decision, request additional information, or direct the city engineer to accept the petition and present it to the council in accordance with subsection(6) of this section.

(5) The council, upon its own motion may initiate consideration of a proposed local improvement. Local improvement projects are also initiated for consideration under this section when the project is included in the council approved capital improvement plan.

(6) The city engineer, except when proceeding under subsection 7.160(8), following initiation of consideration shall furnish the council a report containing the following information and whatever additional information the council requires:

(a) A map showing the general nature, location, and extent of the proposed local improvement and the contemplated district within which land would be assessed for the cost of the proposed improvement.

(b) A list of all parcels of land in the district and of their owners.

(c) An estimate of the total cost of the proposed improvement with a breakdown showing the estimated amount and its percentage of the total estimate to be borne by any petitioner prior to assessment, by local improvement assessments against specially benefitted property, by the city and by any others.

(7) After considering a report furnished under subsection 7.160(6), the council may:

(a) Order the local improvement to be made and direct the city engineer to prepare plans and specifications for the improvement and to call for bids on the construction contract;

(b) Modify the improvement, order it to be made as modified, and direct the city engineer to prepare plans and specifications for the modified improvement and to call for bids on the construction contract;

(c) Require additional information about the improvement; or

(d) Decide not to make the improvement.

(8) Upon finding that the petitioner(s) own property that would bear more than half the estimated assessments for a petitioned local improvement, or that after polling property owners, the owners of property that would bear more than half the estimated assessments for an improvement are not opposed to the proposed improvement, or that sanitary sewer improvements are necessary for the public health and safety or for the economical and orderly development of public improvements, the city engineer shall initiate a proposed local improvement by:

(a) Preparing plans and specifications for the improvement as if the council had directed their preparation;

(b) Calling for bids on the improvement under section 7.165, and

(c) Presenting to the council the estimates and recommendation required by subsections 7.160(6) and 7.166(1).

(9) Parcels for which an equivalent assessment has been paid prior to construction of a street improvement pursuant to sections 7.180(5)(e) and 7.407 of this code shall be included in the local improvement district but shall not be assessed. A person who has previously paid such an equivalent assessment, or whose predecessor in interest or agent has done so, may petition for an improvement in the same manner as owners of property who have not paid an equivalent assessment, and the amount paid as an equivalent assessment shall be treated as the estimated assessment against the parcel for purposes of this subsection.

(Section 7.160 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19488, enacted June 22, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and Ordinance No. 20236, enacted November 26, 2002, effective May 26, 2002; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.165 Local Improvements - Public Notice and Call for Bids.

(1) In a newspaper of general circulation in the city the city engineer shall give public notice of the proposed local improvement at least ten days before the public hearing on the improvement. The notice shall state:

(a) The estimated total cost of the proposed improvement and how the cost shall be borne.

(b) When and where a public hearing on the improvement will be held.

(c) The date the council directed preparation of plans and specifications for the improvement, or the date and description of the city engineer's finding required by subsection 7.160(8).

(d) The date by which the improvement is to be completed.

(e) Who may remonstrate against the improvement.

(f) How such a remonstrance may be made.

(2) By first-class mail the city engineer may also notify owners of property in the contemplated improvement district of the public hearing prior to formation of the improvement district. The notice shall include the information contained in the newspaper notice required by this section and shall identify for each owner the property to be assessed for the proposed local improvement.

(Section 7.165 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 18250, enacted August 23, 1978, Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19488, enacted June 22, 1987; and Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990.)

7.166 Local Improvements - Hearing on Improvement.

(1) Before formation of a local improvement district, the council or its designee shall hold a public hearing on the improvement. At the hearing the city engineer shall provide:

(a) An estimate of the unit cost to be assessed to properties in the improvement district.

(b) An estimate of the city costs that the improvement would entail.

(c) An estimate of the improvement costs to be borne by others.

(d) A recommendation on whether the improvement should be made.

When the hearing is conducted by the council's designee, the designee shall prepare a written summary of the hearing and submit it to the council.

(2) When the hearing required by subsection 7.166(1) is conducted by the council's designee, if, without regard for any council subsidy policy, the owners of property that would bear more than half the amount estimated to be assessed to finance the improvement or repair of a street or alley remonstrate, the council's designee shall continue the hearing to a council meeting and direct the city engineer to send by first-class mail a notice to the owners of the affected property stating the date, time and place of the council meeting when the proposed improvement and the remonstrance will be considered. As used in this

subsection "subsidy policy" means a policy specifically designated as a subsidy program and not other council policies dealing with the allocation of local improvement costs.

(3) After considering evidence and argument presented at the hearing, the council may:

(a) Subject to city charter limitations, approve by resolution the local improvement with or without minor modifications and order it to be made. The resolution shall generally describe the improvement to be constructed and the contemplated boundaries of the district in which property is to be assessed to pay for the improvement.

(b) Delay the approval not more than 15 days.

(c) Substantially modify the improvement and call for a revised notice to be sent to the owners of the affected property as provided in subsection 7.165(2) and a revised city engineer's report as required by subsection 7.166(1) and then conduct the hearings as required in this section on the modified improvement.

(d) Abandon the improvement.

(4) If the council orders a local improvement to be made and does not concurrently levy the assessments therefor, notice of the prospective assessments to finance the improvement shall be given to each title company known to the finance officer to be conducting business in the city. Each company that receives the notice shall record the prospective assessment in all title searches for property in the assessment district contemplated for the improvement.

(5) After formation of a local improvement district the city manager may award a contract for the construction of the improvement as provided in section 2.1200 et seq. of this code.

(Section 7.166 added by Ordinance No. 17955, enacted April 11, 1977, amended by Ordinance No. 19093, enacted February 14, 1983, effective August 14, 1983; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and Ordinance No. 19935, enacted October 25, 1993.)

7.170 **Local Improvements - Assessments - Computation**.

(1) For a local improvement ordered by the council the total estimated cost or the total cost of the improvement shall be computed by the city engineer and shall include but not be limited to the costs of constructing the improvement, engineering, interest on warrants, advertising, and providing notice of assessments and overhead.

(2) The total estimated cost or the total cost of all improvements shall be divided among the properties included in the local improvement district and the city in accordance with section 7.175. The total estimated cost or the total cost of street improvements shall be divided among the properties included in the local improvement district and the city in accordance with section 7.175 and 7.180.

(3) For purposes of assessing property under chapter 7 of this code, property shall be deemed to abut a local improvement, whether the

local improvement is a sidewalk, street, or other local improvement, if the property physically touches (i.e. is directly adjacent to) a public way within which the local improvement is located.

(4) For purposes of assessing property for street improvements under chapter 7 of this code, property shall be deemed to be served by a local improvement if, at the time of LID formation, the property:

(a) Abuts the street being improved; or,

(b) Is located on a dead end street or cul-de-sac and is dependent upon the street being improved for access to the street system.

(Section 7.170 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 20077, enacted January 27, 1997, effective February 26, 1997; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.175 Local Improvements - Apportionment of Assessments.

(1) Whatever share of the total actual project costs of the local improvement is to be borne by the city and by sources of funds other than assessments shall be deducted from the total project costs before they are apportioned and assessed under this section. The city shall pay the costs of the following, provided funds are available and the project has appropriate priority:

(a) Components of the local improvement that will not be assessed pursuant to subsections (2) through (9) of this section 7.175 and subsections 7.180(2) through (5);

(b) Street improvements and sidewalks within the intersection of public ways other than intersections of new streets within the boundaries of a new development;

(c) A portion of the street and alley improvements for a lot or parcel upon which one single family dwelling or duplex exists which is owned and occupied by low-moderate income person(s) and which property is adjacent to an alley or served by a street which is unimproved or improved with substandard improvements at the time the local improvement district is formed if the street or alley improvement is initiated by the council or by property owner petition.

(d) Features of storm sewers constructed as part of a street improvement project within existing developed areas which are in addition to those necessary to properly drain the surface of the street being improved and to provide water quality treatment to the runoff from the street surface;

(e) Other costs attributable to special conditions or to policies adopted prior to or at the time the council adopts the resolution forming the local improvement district.

(2) The assessments for individual parcels of real property shall be calculated and assessed as follows against the property specially benefitted by the local improvement:

(a) Special costs or features of the improvement that benefit a particular parcel or parcels in a manner peculiar to the parcel(s) shall, together with a share of the overhead for the improvement, be assessed separately against each benefitted parcel.

(b) The remainder of the assessable costs of the improvement shall be assessed and apportioned as described in subsections (3) through (9) of this section and section 7.180.

(c) Notwithstanding any provision in subsections (3) through (9) of this section and section 7.180, the city engineer may accept an alternative means of assessments or other means of collecting funds for local improvements if:

1. The alternative means is approved by all affected property owners; and
2. The city engineer determines that the alternative means adequately protects the city's interest in recovering its costs.

(3) Alley improvement assessments. Alley improvement assessments shall be apportioned as follows:

(a) The front footage of a parcel along the alley shall be ascertained and that footage shall be weighted, on the basis of existing use of the parcel under the zoning of the city, by multiplying the footage by the factor indicated for that use in the following table:

Use	Factor
Single family dwelling or duplex	1.0
Other residential	3.0
Commercial or General Office,	10.0
Industrial	10.0
Other	1.0 – 10.0*

*According to the most intensive use of the parcel most comparable to the use listed above as determined by the city engineer.

(b) The area of each such parcel that is within 160 feet of the alley, as measured at right angles from the front footage of the parcel, shall be ascertained and that area shall be weighted on the basis of permissible use of the parcel under the zoning of the city, by multiplying the area by the factor indicated for that use in the table set forth in (6)(a) of this subsection.

(c) One-half of the general costs and overhead to be assessed shall be apportioned on the basis of the weighted front footage and one-half on the basis of the weighted areas.

(d) Assessments for alley improvements shall be calculated on a block-by-block basis and shall include all the costs of the alley improvement, including, but not limited to:

1. Drainage infrastructure such as catch basins, stormwater quality devices, and the pipings to connect the drainage infrastructure to storm sewers for properties specially benefited by the basins; and

2. Intersections of alleys, and driveway approaches of alleys at their intersections with streets.

(4) Sidewalk assessments. Parcels abutting a sidewalk shall be liable for a proportionate share of the cost of the sidewalk, based on the front footage of the parcel abutting the sidewalk. Where, however, the council finds that the topography makes it unfeasible to construct a sidewalk on both sides of the street, the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk, on the basis of the front footage abutting or directly across the street from the sidewalk, or the costs may also be apportioned on the basis of the area of sidewalk or driveway apron or both abutting each parcel, whichever basis is determined to be more equitable by the council.

(5) Storm drainage system assessments. The cost of storm sewer construction shall be borne in the following manner:

(a) In a new or undeveloped subdivision or a new development, the parcels specially benefitted by the storm drainage system shall bear the cost of the system pipe or other facility up to and including the first 24 inches of pipe diameter or comparable capacity in another storm drainage facility. Subject to subsection (1) of this section, for pipes larger than 24 inches or comparable capacity in another storm drainage facility, the city shall pay a proportional share of the cost calculated as follows:

$$\text{City Percentage of Cost} = \frac{(\text{Pipe Diameter}) - 24}{(\text{Pipe Diameter})} \times 100\%$$

Where pipe diameter is actual pipe diameter or the comparable measurement of capacity of other storm drainage facility being used.

(b) The cost to be assessed shall be apportioned to each parcel on the basis of its land area in the assessment district.

(6) Sanitary sewer assessments. The cost of sanitary sewer construction shall be borne in the following manner:

(a) The properties specially benefitted by a sanitary sewer shall bear the cost of the sewer up to and including eight inches of pipe diameter. The additional cost of a sanitary sewer may be borne by the specially benefitted properties, the city and others as provided in subsection (1) of this section.

(b) Sanitary sewer service lines. Each parcel provided with a service line that extends from the eight-inch or larger lateral sewer line to within 10 feet of the property line, shall be considered to have one service line connection point. If more than one service line connection point is provided the parcel, it shall be assessed for the actual number of service line connection points. For large,

unplatted parcels, provided with one or more service line connection points, each service line connection point shall be considered to serve an area of not more than 120 feet in width, and not more than 60 feet on each side of the service line connection point. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point. Each parcel shall be charged for the number of service line connection points provided.

(c) Lateral sewer system. The lateral system shall include all cost items, including overhead costs, related to at least an eight-inch lateral system. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total lateral system cost by the total service area. The service area for each parcel shall be determined as follows:

1. For parcels provided with a service line, the service area shall be that portion of the parcel lying within 160 feet of the street right-of- way line or within 160 feet of the side- or rear-lot lines when the sewer is located nearer such a line than the street line.
2. For parcels where service lines are not provided, a compensating factor shall be applied to allow for the distance to the lateral sewer line. The factor shall be computed as follows:

$$\text{Factor} = \frac{160 - (\text{distance from property line to sewer} - \tfrac{1}{2}\text{ right-of-way width})}{160}$$

The area, as determined in (9)(c)1 above, shall be multiplied by this factor to determine the equivalent area of service for the lateral system. Lateral system costs shall also include at least an eight-inch equivalent cost for a portion of all existing or new trunk sewer lines larger than eight-inch diameter which are necessary to complete the sewer system within the improvement district.

(7) Other local improvements. The cost of local improvements not identified in subsections (3) through (9) of this section shall be borne by the property specially benefitted as provided in the council resolution forming the local improvement district.

(8) When parcels of real property to be assessed are in a planned unit development, condominium or other development in which the common elements are jointly owned by those owning individual units within the development, the entire development shall be treated as a single parcel and its assessment shall be determined as provided in subsection 7.175(2). After determining the assessment for the entire planned unit development or condominium, the assessment shall then be

apportioned and assessed against each individual unit of ownership within the planned unit development or condominium and that unit's interest in the common elements according to the terms of the irrevocable petition, if there is one, or according to the recorded declaration if it contains express language directing the apportionment of assessments for public improvements. Notwithstanding the foregoing sentence, the city engineer may select an alternative method if, in the engineer's judgment, the recorded declaration does not provide adequate security for payment of the owners' obligations to the city and the alternative method is equitable to all owners. Absent such express language in an irrevocable petition, a recorded declaration, or a determination by the council that only specific individual units within the planned unit development or condominium specially benefit from the improvement and should therefore bear the assessments, the assessments shall be apportioned and assessed among the individual units according to the individual unit's proportionate interest in the common elements. Where the foregoing provisions conflict or do not provide sufficient guidance, the city engineer shall make an equitable apportionment of the assessments according to the engineer's judgment as to proportionate benefit and in a manner that provides adequate security to assure payment of the owners' financial obligations to the city.

(9) Without repeating the notice required by section 7.185, prior to enactment of the ordinance levying the assessment required by section 7.190, the proposed assessments for individual parcels of real property calculated under subsection 7.175(2) and section 7.180 may be adjusted by a written agreement between the affected owners and the city engineer provided:

(a) No parcel's adjusted proposed assessment exceeds the assessed value of the parcel at the time of the agreement;

(b) The proposed adjusted assessment for any parcel subject to subsections 7.160(2) and (3) remains within the limitations imposed under subsections 7.160(2) and (3); and

(c) There is no increase in the city's share of project costs or in assessments to other parcels within the project whose owners were not a party to the agreement.

(Section 7.175 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; Ordinance No. 19808, enacted November 4, 1991, effective May 4, 1992; Ordinance No. 19922, enacted June 21, 1993; Ordinance No. 20214, enacted October 23, 2000, effective April 23, 2001; Ordinance No. 20236, enacted November 26, 2002, effective May 26, 2002; Ordinance No. 20321, enacted May 25, 2004, effective November 24, 2004; Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.180 Local Improvements – Street Assessments.

(1) Assessment of Served Properties

(a) Except as otherwise provided in this section 7.180, all residential and nonresidential parcels served by a street to be improved shall be assessed for the assessable street improvement components. The cost for the assessable street improvement components for each parcel served by the improvement shall be apportioned in accordance with section 7.175 and subsections 7.180(2) through (5).

(b) Even if a parcel is not served by a street being improved, if a parcel is subject to a recorded petition for street improvements as described in section 7.160, it shall be assessed for street improvements, or the person who obtains a permit to develop such a parcel shall pay an equivalent assessment under the circumstances described in subsection 7.180(5). When a parcel is served by two or more streets, the parcel is served by a street when the parcel uses that street for its address. A duplex on a corner lot, or a vacant corner lot that may be developed with a duplex shall be deemed to be served by both streets.

(2) Assessable Street Improvement Components

(a) Except as provided in section 7.175(1), assessable components of street improvements include driveway aprons, a share of the improvements to the traveled way from back of curb to back of curb as provided in subsections 7.180(3) and 7.180(4) (including, but not limited to street structure of a thickness determined by the city engineer, lanes for vehicular use, parking and parking bays); curbs; gutters; catch basins, piping and other features necessary to remove and treat or cleanse storm water from the improved surfaces; and other related features.

(b) Where the width of the street improvement varies within the improvement district or the improvement includes special features that abut fewer than all of the parcels in the improvement district, the city engineer shall determine whether the additional width or special features specially benefit specific parcels or benefit the improvement district generally, and parcels shall be assessed for additional width or special features in accordance with the engineer's determination.

(c) Assessable components of a local street improvement may include street lights and street trees if they are within the scope of the improvement project. The assessable thickness of a local street structure shall be the full thickness determined by the city engineer to be appropriate for the permissible uses of the parcels abutting the street.

(d) Assessable components of an arterial or collector street improvement may include a portion of the street trees planted as part of the improvement project. The assessable thickness of

street structure for an arterial or collector street shall be the thickness determined by the city engineer to be the equivalent of the thickness appropriate for predominantly local street use. In addition to assessment for curb, gutter, sidewalks and driveway aprons, parcels assessed for improvements to an arterial or collector street shall be assessed for a portion of the pavement and the associated pavement drainage system (catch basins, connecting pipes and other drainage facilities).

(3) Residential Properties

(a) For purposes of this section 7.180, "residential property" means a parcel with residential zoning that is either vacant or developed with a single family, duplex or multi-family structure.

(b) A parcel served by a local street to be improved shall be assessed for a maximum of 17 feet of pavement width and associated drainage system. As used in this subsection, "local street" means any street not designated as an arterial or collector street on the Street Classification Map adopted on November 22, 1999, or as subsequently amended.

(c) A parcel served by an arterial or collector street to be improved shall be assessed according to the functional classification of the street, as follows:

1. Major arterial - no paving or drainage.
2. Minor arterial - 3-1/2 feet of pavement width and associated drainage system for the portion of pavement to be assessed.
3. Major collector - 7 feet of pavement width and associated drainage system for the portion of pavement to be assessed.
4. Neighborhood collector - 10 feet of pavement width and associated drainage system for the portion of pavement to be assessed.

As used in this subsection, "major arterial," "minor arterial," "major collector," and "neighborhood collector" mean streets or travel corridors designated by one of those terms in the city's or county's adopted comprehensive transportation plan, in an adopted arterial/collector street plan, or if not so designated, which the city engineer determines to function in the capacity of one of the four classifications.

(d) Except when special circumstances exist that are identified in the resolution creating a local improvement district, assessments for street improvements shall be based on the cost per Residential Assessment Unit (RAU). The cost per RAU shall be determined by dividing the total costs apportioned to the residential properties by the total number of RAUs within the local improvement district.

(e) Non-Vacant Parcels

1. For purposes of this subsection 7.180(3), a parcel, regardless of size, is non-vacant if it contains a single family, duplex, triplex or multi-family dwelling structure.

2. Parcels with a single family, duplex or triplex shall be assessed the cost of one RAU. Parcels with a single family, duplex, or triplex located on a previously improved dead end street or cul-de-sac shall be assessed the cost of .75 RAU.
3. Parcels with more than three dwelling units shall be assessed the cost of .25 RAU per dwelling unit. Parcels with more than three dwelling units located on a previously improved dead end street or cul-de-sac shall be assessed the cost of .1875 RAU per dwelling unit.

(f) Vacant Parcels

1. For purposes of this section, "vacant parcel" means a parcel that is not a "non-vacant" parcel as defined in subsection 7.180(3)(e).
2. Vacant parcels of less than one-half acre in low density or single-family residential zones shall be assessed for the minimum number of dwelling units required in the zone by multiplying the minimum required number of dwelling units for the zone by the cost per RAU.
3. Vacant parcels of less than one-half acre in zones other than low density or single-family residential zones shall be assessed for the minimum number of dwelling units required in the zone by multiplying the minimum required number of dwelling units for the zone by the cost of .25 RAU.
4. Vacant parcels of one-half acre or larger shall not be assessed at the time of the street improvement, but the person who receives a permit to develop such a parcel shall pay an equivalent assessment when required by and in accordance with subsection 7.180(5) and 7.407 of this code.

(4) Non-Residential Properties

(a) For purposes of this section 7.180, "non-residential property" means a parcel that is not a "residential parcel" as that term is defined in subsection 7.180(3)(a).

(b) A parcel served by a local street to be improved shall be assessed for a maximum of 22 feet of pavement. A parcel served by an arterial or collector street to be improved shall be assessed for a maximum of 10 feet of pavement width and associated drainage system. The street classifications shall have the meanings provided in subsection 7.180(3).

(c) Except when special circumstances exist that are identified in the resolution creating a local improvement district, assessments for street improvements shall be based on the total area of the property multiplied by the area unit cost plus the total linear front footage multiplied by the front unit cost. The area unit cost is determined by dividing half of the apportioned assessable costs of the improvement by the total assessable area of all lots included in the improvement district. The frontage unit cost is determined

by dividing half of the apportioned assessable costs of the improvement by the total assessable frontage of all lots included in the improvement district. For parcels located on dead end streets or cul-de-sacs that have been previously improved, assessments for street improvements shall be based on three-quarters of the total area of the property multiplied by the area unit cost plus three-quarters of the total linear front footage multiplied by the front frontage unit cost.

(d) Vacant parcels of one-half acre or larger shall not be assessed at the time of the street improvement, but the person who receives a permit to develop such a parcel shall pay an equivalent assessment when required by and in accordance with subsection 7.180(5) and 7.407 of this code. "Vacant parcel" means a parcel that has no structure designed or used for human residence, business, industry or other occupancy, or any physical alteration to the land designed, used or intended to serve such a structure or a business or other use whose employees or customers access the structure or business or other use from a street.

(5) Equivalent Assessment

(a) For purposes of this subsection (5), the minimum required number of dwelling units shall be based on the minimum dwelling units per acre required for the zone.

(b) The equivalent assessment for residential parcels in low density or single-family residential zones not assessed at the time of the street improvement shall be determined by multiplying the minimum required number of dwelling units for the zone by the cost per RAU.

(c) The equivalent assessment for residential parcels in zones other than low density or single-family residential zones not assessed at the time of the street improvement shall be determined by multiplying the minimum required number of dwelling units by the cost of .25 RAU.

(d) The equivalent assessment for non-residential parcels not assessed at the time of the street improvement shall be based on the total area of the property multiplied by the area and cost plus the total linear front footage multiplied by the front unit cost.

(e) Except as provided in subsection 7.180(5)(f), the equivalent assessment shall be calculated, reviewed and paid as provided in section 7.407 of this code before any of the following occurs:

1. A permit is issued authorizing construction of a new driveway access to the street;
2. A permit is issued authorizing construction of a new street that connects the parcel to the street;
3. Any partition, subdivision or development of the parcel regulated by Chapter 9 of this code is approved; or

4. Construction of a new structure capable of human occupancy.

(f) A person who receives a permit to develop a vacant parcel of one-half acre or more before improvements to a local street serving the parcel have been constructed shall not pay an equivalent assessment when the permit is received, but the parcel shall be assessed as otherwise provided in section 7.175 and 7.180 of this code when the street improvements are constructed.

(g) A person who receives a permit to develop a vacant parcel of one-half acre or more, whether before or after the improvements to an arterial or collector street serving the parcel have been constructed, shall pay an equivalent assessment in accordance with section 7.407 and subsection 7.180(5)(e).

(h) Revenue received as payment of an equivalent assessment required by this subsection shall be used for street purposes and shall be in addition to all other fees and assessments required by this code.

(Section 7.180 added by Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.185 Local Improvements - Assessments - Notice.

(1) Before an assessment for a local improvement is levied, the finance officer shall dispatch by certified mail to each owner whose parcel of real property is to be subject to the assessment a notice stating:

(a) The description of the parcel of real property to be subject to the proposed assessment.

(b) A general description of the project and a description of the kind of improvement for which the proposed assessment is to be made.

(c) The amount of the proposed assessment.

(d) When the assessment is approved by the council it will become a lien against the described parcel if it is not paid within a specified time.

(e) The time and place of the public hearing on the proposed assessment.

(f) That the owner is requested to attend the hearing and there comment on the proposed assessment, that any owner who intends to comment on the proposed assessment must notify the city engineer of that intent by 5 p.m. on the third business day before the hearing date, and that failure to do so forfeits the owner's right to comment at the hearing.

(2) The notice required by subsection 7.185(1) shall be dispatched at least 10 days before the hearing to the owner's address as known to the finance officer or, if not so known, as indicated on current records of the Lane County Assessor; and shall also be posted on a bulletin board at city hall at least ten days before the hearing.

(3) The finance officer shall keep a record of the notices mailed and posted

and of receipts indicating delivery of the notices to the property owners.

(Section 7.185 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990.)

7.187 Local Improvements - Assessments - Hearing.

(1) Before the council levies any assessment for a local improvement, the council or its designee shall hold a public hearing and consider comments on the proposed assessments. At the hearing the city engineer and finance officer shall provide an assessment report stating:

(a) The total cost, if known, or an estimate of the total cost of the improvement, the amount of that cost to be assessed benefited real property and the amount to be borne by the city and others.

(b) The method of calculating the assessments for the improvement.

(c) A description of each parcel of real property proposed to be assessed, the name of the owner, and the amount of its proposed assessment.

(d) Certification that notice of the proposed assessment was given as required by section 7.185 of this code.

(e) Whatever additional information the council requires.

(2) After considering evidence and argument presented at the hearing, the council shall make findings regarding compliance with sections 7.160 to 7.190 and determining the special benefit each parcel of real property assessed receives from the local improvement. The findings shall be adopted in the ordinance levying the assessments.

(3) If during the review of the proposed assessments the council or its designee determines that a proposed assessment should be increased, a new notice of the increased proposed assessment as required in section 7.185 and an opportunity for comment thereon shall be given the owner of the affected real property before the increased proposed assessment is levied.

(Section 7.187 added by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.190 Local Improvements - Assessments - Levy and Notice Thereof.

(1) The council by ordinance shall levy assessments on parcels of real property specially benefited by local improvements. Upon enactment of such an ordinance, the finance officer by first class mail shall give notice of the assessments to the owners of the assessed parcels. The notice shall state that each assessment may be paid in full, without interest, within ten days after the date of the assessment ordinance and that, if the assessment is not so paid, interest on the unpaid balance of the assessment will accrue as prescribed in the assessment ordinance until the assessment is paid, unless payment of the assessment is deferred in accordance with chapter 7 of this code. The notice shall also state that the assessment may be paid in installments according to

the terms set forth in the assessment ordinance, and shall include an application for so paying the assessment.

(2) Unless otherwise specified by this code or by assessment ordinance, reference in this code to making assessment or lien payments in installments shall mean paying the obligation in up to 119 monthly installments or twenty (20) semi-annual installments including principal and interest at the rate set under section 2.022 of this code.

(3) In addition to any deferral, extension or modification of payments authorized by this chapter, an assessment may be modified, compromised or canceled as provided in section 2.582 of this code.

(Section 7.190 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance 19093, enacted February 14, 1983, effective August 14, 1983; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance No. 19784, enacted June 24, 1991, effective July 24, 1991; Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.193 Local Improvements – Deferral of Street Assessments.

(1) To the extent a funding source is available from a public entity or any other source approved by the council at the time the project is initiated that will provide the city with sufficient funds to ensure no initial cost to the city or affected property owners for the construction of the local improvements, parcels with an owner occupied single family dwelling or an owner occupied duplex dwelling assessed for street improvements may defer payment of the assessment until sale or transfer of the parcel.

(2) The deferred assessment shall become a lien on the property. The lien shall accrue interest from the date it is levied until the deferral ends at a variable rate to be adjusted annually to reflect the city's costs in providing the funding source. When the deferral ends, payment of the assessment and accrued interest shall be made as provided in section 7.190.

(3) An assessment deferred pursuant to this section is not subject to the requirements and criteria set forth in section 7.195 – 7.220 of this code.

(4) Property owners deferring payment pursuant to this section are not eligible to participate in the Improvement Assistance Program.

(5) A deferral under this section shall terminate if:

(a) The owner granted the deferral sells or transfers to any other party fee title or a possessory interest in the parcel to which the deferral pertains, except sales or transfers between persons related by blood, marriage or adoption; or,

(b) Title to the parcel passes to another party by devise or intestate succession; or,

(c) The owner granted the deferral ceases to occupy the dwelling.

(Section 7.193 added by Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011; administratively corrected October 5, 2011.)

7.195 Local Improvements - Deferral, Extension, or Modification of Payment of Assessment - Eligibility for Improvement Assistance Programs.

(1) For purposes of the improvement assistance programs described in this section:

(a) A property owner(s) is one or more natural persons who reside on real property that is assessed and who hold title to the property in fee simple, by tenancy in common, by the entirety, for life or other similar estate, or who are purchasing such title by land sale contract.

(b) Federal poverty level income is the income established for an owner(s) with or without dependents as set forth in the publication of the U.S. Department of Health and Human Services entitled "Poverty Income Guidelines by Family Size" or any successor replacement publication.

(2) To the extent that resources are available in the fund for assistance with local improvements, deferral, extension, or modification of payments on assessments for local improvements, for assessments under sections 6.476 and 7.154 and for nuisance abatement liens shall be accorded eligible real property owners.

(a) To be eligible for deferral of assessment payments under this subsection:

1. At least one of the property owner(s) shall be sixty-two (62) years of age or more;
2. A single property owner(s)'s annual income may not exceed thirty-five percent (35%) of the latest Lane County median family income recognized on July 1 of each year by the Department of Housing and Urban Development. If there is more than one property owner, their combined annual income may not exceed forty percent (40%) of that median family income. These maximum annual incomes may be increased by an additional five percent (5%) of the Lane County median family income for dependent who is not a property owner(s) and who resides on the property and is related to the property owner(s) by blood or marriage in the first or second degree;
3. None of the property owner(s) may own assets in addition to the property of residence and its household furnishings worth more than four (4) times the allowable income under subsection (a)2 of this subsection, except that assets producing any part of the income counted in subsection (a)2. of this subsection shall be excluded in determining the amount of assets owned; and
4. None of the property owner(s) may own or have a possessory interest in other real property which is allowed a deferral under this section.

(b) To be eligible for an extension or modification of assessment payments:

1. At least one of the property owner(s) shall be fifty-five (55) years of age or more;
2. A single property owner(s)'s annual income may not exceed fifty-five percent (55%) of the latest Lane County median family income recognized on July 1 of each year by the Department of Housing and Urban Development. If there is more than one property owner, their combined annual income may not exceed sixty percent (60%) of that median family income. These maximum annual incomes may be increased by an additional eight percent (8%) of the Lane County median family income for each dependent who is not a property owner(s) and who resides on the property and is related to the property owner(s) by blood or marriage in the first or second degree.
3. None of the property owner(s) may own assets in addition to the property of residence and its household furnishings worth more than three (3) times the allowable income under subsection (b)2. of this subsection, except that assets producing any part of the income counted in subsection (b)2. of this subsection shall be excluded in determining the amount of assets owned; and
4. None of the property owner(s) may own or have a possessory interest in other real property which is allowed a deferral under this section.

(3) To the extent that funds are available in the Sewer Assessment Deferral Loan Program, deferral of payments on assessments for lateral construction, trunk levy, service connection fees, and other connection charges shall be accorded eligible property owner(s). When in the judgment of the finance officer the projected demand for assessment deferral under this subsection exceeds the available funds, priority shall be given to those eligible under part (3)(a) of this subsection, then to those eligible under part (3)(b) of this subsection.

(a) To be eligible for deferral of payments on the full sanitary sewer assessment, service connection fees, and other connection charges, the property owner(s)'s household income may not exceed one hundred fifty percent (150%) of the latest federal poverty level income.

(b) To be eligible for deferral of payments on the part of the sanitary sewer assessment attributable to the lateral sewer system, the property owner(s)'s household income may not exceed one seventy-five percent (175%) of the latest federal poverty level income.

(c) To be eligible for deferral of one-half of the payments on the part of the sanitary sewer assessment attributable to the lateral sewer

system, the property owner(s)'s household income may not exceed two hundred percent (200%) of the latest federal poverty level income.

(d) None of the property owner(s) may own or have a possessory interest in other property which is allowed a deferral under this section.

(Section 7.195 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 18074, enacted November 9, 1977; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987, Ordinance No. 19555 enacted May 23, 1988, effective November 23, 1988; Ordinance No. 19651, enacted November 20, 1989; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; and Ordinance No. 19784, enacted June 24, 1991, effective July 24, 1991.)

7.197 Local Improvements - Deferral of Assessment Payment - Eligibility Based on Delay of Benefit.

(1) As used in this section, "undeveloped real property" means a single parcel of land or several contiguous parcels of land in single ownership with an area free of permanent structures capable of being divided into four or more developable lots.

(2) Collection of the portion of the street construction assessment representing the costs in excess of that for a 28-foot street may be deferred if:

(a) The real property is located in an R-1 zone and is undeveloped property; or

(b) The real property is in any other zone but is used for an owner-occupied single-family dwelling. (If the property has the potential for development as more than one lot, deferral will be allowed only on the portion where the dwelling is located, including minimum side yard setbacks.)

(3) Collection of a portion of an assessment for improving an alley may be deferred when real property specifically benefited by the improvement is the site of only an owner-occupied single-family dwelling and structures accessory thereto, and is located in a zone other than AG or R-1. The portion of the assessment which is to be deferred may not exceed the difference between the amount of the assessment as it is computed on the basis of the zone on which the property is located and the amount as it would be computed if the property were in an AG or R-1 zone.

(4) Collection of an assessment for construction of a new street opened through action of the council may be deferred when the abutting real property does not have driveway access to the street and is not developed for a purpose which makes use of the street.

(5) Collection of a sewer improvement assessment may be deferred when a sanitary sewer or a storm sewer trunk line is installed across or adjacent to undeveloped real property which is located within 160 feet

of the sewer, which has not been subdivided, which does not have access to a sanitary sewer lateral system, and which is located more than 160 feet away from a dedicated road or street.

(6) Collection of an assessment for construction of a sanitary sewer service line may be deferred if:

(a) The service connection will not be used until a subdivision occurs;

(b) Installation with a paving project will eliminate a future street cut; or

(c) Property owner approval was not given but it is in the city's best interest to install the service line.

(7) (a) Collection of a street construction assessment may be deferred if:

1. A funding source is available from a public entity or any other source approved by the council at the time the project is initiated that will provide the city with sufficient funds to ensure no initial cost to the city or affected property owners for the construction;
2. The council finds that the deferral is consistent with council goals and policies, and otherwise is in the public interest; and
3. The real property is located inside the Urban Growth boundary, is capable of being divided into four or more developable lots, is not part of a phased development, and consists of a vacant or partially developed parcel with over 200 feet of street frontage.

(b) A deferral under this subsection shall terminate:

1. Upon the sale of the property or transfer of ownership, except sales or transfers between persons related by blood, marriage, or adoption;
2. Upon initiation of subdivision platting of the real property; or
3. Upon issuance of a building permit that would intensify the level of use of the property.

Upon termination of the deferral, the owner of the real property shall thereupon be required to pay the assessment according to the terms in the original assessment ordinance.

(c) Nothwithstanding a deferral granted under this subsection, the owner of any real property affected by the deferral may elect to pay the assessment at the time it is levied, in the manner provided in section 7.190 of this code.

(d) Following full payment of the assessment, the public entity or other source providing the temporary funds for construction of the improvement shall be reimbursed the amount it had provided.

(Section 7.197 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19315, enacted March 11, 1985, Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 20068, enacted October 28, 1996, effective April 28, 1997.)

7.200 **Local Improvements - Agreement to Defer, Extend, or Modify Assessment Payments**. The finance officer shall make available to interested persons upon request information regarding eligibility for deferral, modification, or extension of assessment payments. An eligible real property owner who requests such a deferral, extension, or modification shall submit evidence of eligibility on forms provided by the finance officer. After review of the evidence submitted, the finance officer shall notify the applicant whether the request has been granted. If it has, the applicant shall enter into a contract to pay the assessment in accordance with the terms of the deferral, extension, or modification. The contract shall be on a form approved by the city attorney, and may be recorded in the official records of Lane County, Oregon.

(Section 7.200 amended by Ordinance No. 17955, enacted April 11, 1977, and Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.205 **Local Improvements - Interest on Assessment Payments Deferred, Modified, or Extended**.

(1) An assessment deferred under subsection 7.195(2)(a) shall accrue simple interest of three percent (3%) per annum from the date it is levied until the deferral ends. The contract required by section 7.200 shall specify whether the interest is to be paid semi-annually or monthly during the deferral, or in one lump sum at the end of the deferral. When the deferral ends payment of the assessment shall be made as provided in section 7.220.

(2) Extended or modified assessment payments authorized under subsection 7.195(2)(b) shall be due monthly or semi-annually for a term of years not to exceed twice the number of years remaining on the assessment bonding agreement as of the date that the application for extension of payments is submitted. The amount and date of monthly or semi-annual payments to be made shall be as specified in the contract of extension or modification. Each such payment shall include interest accrued to the time of the payment on the unpaid balance of the assessment. During the first 10 years of the extension, interest shall accrue at the rate then authorized by section 2.022 of this code. During any period of the extension after the 10 years, interest shall accrue at three percent (3%) per annum less than the rate of interest charged at the beginning of the extension period.

(3) Deferrals under subsection 7.195(3) shall accrue simple interest at the annual rate of five percent (5%), or, if the city borrows money from the state, the rate charged by the state to fund the Sewer Assessment Deferral Loan Program. Such interest shall accrue from the date the assessment is levied until the deferral ends and shall be paid at the end of the deferral. When the deferral ends payment of the amounts deferred shall be made as provided in section 7.220.

(4) An assessment deferred under subsection 7.197(7) shall accrue interest from the date it is levied until the deferral ends at a variable rate

to be adjusted annually to reflect the city's costs in providing the funding source. When the deferral ends, payment of the assessment and accrued interest shall be made as provided in section 7.190

(Section 7.205 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19555 enacted May 23, 1988, effective November 23, 1988; Ordinance No. 20068, enacted October 28, 1996, effective April 28, 1997; and Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008.)

7.210 **Local Improvements - Termination of Deferral, Extension, or Modification of Assessment Payments**. A deferral, extension, or modification of assessment payments shall end if:

(a) The owner of the parcel of real property for whom the deferral, extension, or modification is granted defaults in performing the contract pertaining thereto under section 7.200;

(b) The owner ceases to be eligible for the deferral, extension, or modification under section 7.195;

(c) The owner transfers to any other party fee title or a possessory interest in the parcel to which the deferral, extension, or modification pertains;

(d) Title to the parcel passes to another party by devise or intestate succession, except that the deferral under part 7.195 (2)(a) shall not be terminated so long as the owner occupies the parcel as a single-family dwelling.

(e) The parcel for which a deferral was granted under subsection 7.197(2) or 7.197(3) is used for a purpose other than the use at the time the deferral was granted.

(f) The parcel for which a deferral was granted under subsection 7.197(4) has access to the street through a driveway, or is used for a purpose other than a single-family residence, or is partitioned to create new lots fronting on the street for which the assessment was levied; or

(g) The parcel for which a deferral has been granted under section 7.197(5) is subject to one of the following changes:

1. A land division or redivision either by a subdivision or major or minor partition is filed by the owner;
2. A sanitary sewer lateral system becomes usable by the parcel;
3. A dedicated roadway is extended to provide access to the parcel located within 160 feet of the sewer; or
4. An application is made for a permit to connect existing or proposed improvements on a portion of the parcel to the sewer system of the city.

(h) The owner of the parcel for which deferral or modification or extension has been allowed under section 7.195 fails to comply with the requirement of section 7.215 to provide records demonstrating continued eligibility as determined by section 7.195.

(i) The owner of the parcel for which a deferral was granted subsection 7.197(6) (b) and (c) makes application for a sewer connection permit.

(j) The parcel for which the deferral has been granted shall not have more than two (2) years of property taxes outstanding.

(Section 7.210 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 18074, enacted November 9, 1977, Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; Ordinance No. 19555 enacted May 23, 1988, effective November 23,1988; and Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008.)

7.215 **Local Improvements - Deferral, Extension, or Modification of Assessment Payments - Investigation of Continued Eligibility**. The finance officer periodically shall review all available records relating to the income and assets of the real property owner for which deferral, extension, or modification of assessment payments has been allowed under section 7.195 to ascertain that the property owner continues to meet the eligibility standards. Within thirty (30) days after request is made by the finance officer, the property owner shall submit such records as the finance officer shall request pertaining to the owner's income and assets.

(Section 7.215 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 18074, enacted November 9, 1977; Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19555 enacted May 23, 1988, effective November 23, 1988.)

7.220 **Local Improvements - Deferral, Extension, or Modification of Assessment Payments - Liens**.

(1) Any assessment for which payments have been deferred, extended, or modified under section 7.195 or section 7.197 shall be a lien on the property to which the assessment pertains. Except as provided in subsection 7.220(2) and except as provided in subsection 7.220(3), when such an assessment becomes due under section 7.210, the entire unpaid principal plus interest shall be due and payable and it may be enforced and collected as though it has not been deferred, extended, or modified and as though no timely application was made to pay the assessment in installments.

(2) When a deferral, extension or modification of assessment payments given under subsection 7.195(2) ends for the reasons in subsections (b), (g)2, (g)3, (g)4 and (i) of section 7.210, the real property owner may pay the assessment and interest thereon as provided in section 7.190 from the date the deferral, extension or modification ended.

(3) When an owner eligible for deferral under subsection 7.195(3) fails after one year to be eligible for the deferral previously granted, only the portion of the deferral for which the owner is no longer eligible plus accrued interest thereon shall be paid as provided in subsection 7.190(2). If the owner fails to make the payments as provided in subsection 7.190(2), the finance officer may collect the entire amount of the city's lien against the owner's property as provided in subsection 7.225(2).

(Section 7.220 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No.

19393 enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19555 enacted May 23, 1988, effective November 23, 1988; and Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008.)

7.225 Local Improvements - Lien Records and Foreclosure Proceedings.

(1) After passage of an assessment ordinance provided for in section 7.190, the finance officer shall enter in the docket of city liens a statement of the amounts assessed by the ordinance on each particular parcel of real property or portion thereof together with a description of the local improvement, the names of the owners of the parcel assessed, and the date of the assessment ordinance. Upon that entry each amount so entered shall become a lien and charge upon the respective parcel of real property which has been assessed for such improvement.

(2) The city may proceed to foreclose or enforce collection of the full amount of unpaid principal and interest plus attorney fees and costs of foreclosure or collection on delinquent municipal liens in the manner provided by the general law of the State of Oregon or by this code, but the city may, at the direction of the city manager or the manager's designee, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids, except those made by persons who would be entitled under the laws of the State of Oregon to redeem the property.

(Section 7.225 added by Ordinance No. 17955, enacted April 11, 1977, and Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987.)

7.230 Local Improvements - Errors in Assessment Calculations. A person who alleges an error in calculation of assessments may call the alleged error to the attention of the finance officer, who shall determine whether there has been an error in fact. If the finance officer finds that there has been an error in fact, he or she shall recommend to the council an amendment to the assessment ordinance to correct such error; and upon enactment of the amendment, the finance officer shall make the necessary correction in the docket of city liens and send the correct notice of assessment to the property owner by certified mail.

(Section 7.230 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393 enacted July 28, 1986, effective January 28, 1987; and administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

7.235 Local Improvements - Deficit Assessment. In the event that an assessment is made before the total cost of the local improvement is ascertained and the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare the deficit and:

(a) Determine that the cost of preparing a proposed deficit assessment does not justify proceeding under paragraph (b) of this section and

authorize the expenditure of city funds to pay the deficit; or

(b) Prepare a proposed deficit assessment. The council shall set a time for the council or its designee to hear objections to the deficit assessment and shall direct the finance officer to notify the owners of each parcel of real property to be assessed, as provided in section 7.185. After considering evidence and argument presented at the hearing, the council shall make a just and equitable assessment by ordinance, which shall be entered in the docket of city liens as provided by section 7.225. Notice of the assessment shall be sent to the owner in accordance with section 7.190, and the collection of the assessment shall be made in accordance with sections 7.190 and 7.225.

(Section 7.235 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19093, enacted February 14, 1983, effective August 14, 1983, and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.240 **Local Improvements - Rebates**. If, upon the completion of the local improvement project, it is found that the assessment previously levied upon any parcel of real property is more than sufficient to pay the costs of such improvement, the council shall ascertain and declare the excess. When so declared, the excess shall be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the owner of the parcel at the time the excess is declared by the council shall be entitled to the repayment of the excess.

(Section 7.240 added by Ordinance No. 17955, enacted April 11, 1977, and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.250 **Local Improvements - Segregation of Assessments**.

(1) Whenever property assessed as an entire tract under sections 6.476, 7.130 to 7.270 or 7.465 to 7.565 is subsequently subdivided or partitioned, a person owning any of the subdivision or partition and desiring to remove the assessment from the subdivision or to apportion the assessment among the parcels in the partition shall apply to the city finance officer for a segregation of the assessment and a determination of the amount due on that subdivision or partition.

(2) The finance officer may thereupon cause an appraisal of the entire subdivision or partition at the owner's cost and shall determine if the segregation can be made without prejudice to the security interest of the city. If there is no prejudice to the city, the finance officer shall, upon receiving payment applicable to the segregated portion of the tract, discharge the lien of the assessment on that subdivision or partition. Provided, however, that if the lien is discharged before it is determined if there will be a rebate or deficit assessment, the owner shall be advised in writing and a notation shall be made in the lien record of the possibility of a rebate or deficit assessment. If the finance officer determines that the city would be prejudiced by a segregation requested pursuant to subsection 7.250(1) or that another provision of

this code requires payment in full, payment of the entire assessment for the subdivision or partition shall be a condition precedent to discharge of the lien of the assessment. The finance officer shall deny the application in writing and deliver or mail by first class mail, postage prepaid, the decision to the owner.

(3) Any owner aggrieved by the finance officer's decision on an application for segregation of assessment under this section may seek its review before a hearings official following the procedures in section 2.021 of this code. The petitioner shall have the burden of proof in such review.

(4) Each application for segregation of assessment shall be accompanied by a fee in the amount specified in the schedule of fees established by the city manager pursuant to section 2.020 of this code.

(Section 7.250 amended by Ordinance No. 17955, enacted April 11, 1977; Ordinance No. 19197, enacted November 16, 1983, effective January 1, 1984; Ordinance No. 19393, enacted July 28, 1986, effective January 1, 1987; Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990; Ordinance No. 20236, enacted November 26, 2002, effective May 26, 2002; and administratively corrected August 19, 2003.)

7.255 **Local Improvements - Abandonment of Proceedings**. The council may abandon or rescind proceedings for local improvements made under sections 7.160 through 7.270 at any time before the final completion of the improvements. If liens have been assessed in the proceedings, they shall be cancelled, and any payments made on such assessments shall be refunded to the owners of each parcel of real property at the time of the council's action under this section.

(Section 7.255 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.260 **Local Improvements - Curative Provisions**. No local improvement assessment is invalid by reason of:

(a) A failure of the city engineer to provide all required information;

(b) By reason of a failure to have all of the information required in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published or mailed;

(c) By the failure to list the name of, or mail to the owner of any property any required notice; or

(d) By reason of any other error, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any proceeding or step specified in sections 7.160 through 7.270, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining. The council may remedy and correct all such matters by suitable action.

(Section 7.260 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.265 **Local Improvements - Reassessments**. Whenever any assessment, deficit, or reassessment for any local improvement which has been made by

the city is set aside, annulled, declared or rendered void, or its enforcement is restrained by any court of competent jurisdiction, or when the council doubts the validity of the assessment or reassessment or any part thereof, the council may reassess in the manner provided by state law provided, however, that the council or its designee may conduct any hearings as provided in sections 7.166 and 7.187.

(Section 7.265 added by Ordinance No. 17955, enacted April 11, 1977; amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.270 City Bonds in Payment of Special Assessment Liens and City Property.

(1) The finance officer is authorized to accept general obligation bonds and attached coupons of the city in payment of any part of special assessment liens, interest and penalties payable to the city, and is further authorized to accept the bonds and interest coupons in payment of the purchase price of any lands for sale by the city.

(2) Nothing contained in subsection (1) shall authorize the finance officer to pay out any funds or credit of the city for an excess of bonds or interest coupons over the payment sought to be made as provided in the preceding section.

(3) Bonds accepted under subsection (1) shall be reviewed by the finance officer only after they have been approved as to maturities by the council, it being the purpose of this subsection to limit the acceptance of bonds to such maturities as are to the advantage of the city.

(Section 7.270 amended by Ordinance No. 17955, enacted April 11, 1977.)

7.280 Street Tree Program - Policy, Standards, Procedure.

(1) Policy. In order to create attractive and healthy neighborhood environments, no approval shall be granted for a development that involves the creation of a street unless the applicant has submitted and received approval of a street tree plan that ensures street trees will be planted and established in accordance with the standards and procedures provided for in this section and the adopted policies of the Urban Forest Management Plan. Street trees shall be planted in accordance with the approved street tree plan as each lot or area is developed, and shall be required on streets that abut the development as well as on new streets within the development site.

(2) Standards. The city manager, or designee, shall by administrative rules adopted pursuant to section 2.019 of this code establish standards and specifications that ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The standards shall include, but not be limited to, the type of trees that may be planted, and requirements for planting and establishment of the trees. As used in this section, "establishment" includes watering, initial pruning, and replacement of trees, if necessary, for a period of three years from the date of planting.

(3) Procedure. Upon approval of the street tree plan, and prior to approval

of the final plat for subdivisions, planned unit developments, partitions, or approved development plans, the applicant shall:

(a) Pay to the city a fee established by the city manager pursuant to section 2.020 of this code that is equal to the cost of the purchase, installation and establishment of the street trees required by the approved street tree plan. Thereafter, the city shall assume responsibility for the purchase, installation and establishment of the street trees; or

(b) Purchase, install and establish the street trees in accordance with the approved street tree plan, upon (I) first paying to the city a fee established by the city manager pursuant to section 2.020 of this code to reimburse the city for its costs in connection with plan review, inspection, administration and monitoring, and (ii) filing with the city a security bond or deposit in an amount determined by the city to be sufficient to ensure performance under the approved street tree plan.

Existing large-scale street trees on or adjacent to a development site shall be retained unless approved for removal by the city pursuant to section 6.300 to 6.330 of this code during site development or in conjunction with a street construction project. Any street tree removed by permit through demolition or construction within the street right-of-way shall be replaced within the street right-of-way at a location approved by the city with 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. The developer shall be responsible for the cost of the planting, maintenance and establishment of the replacement tree.

(Section 7.280 added by Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)

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Construction Requirements for Individuals, Contractors, Franchisees and Permits for Use of Public Way

7.290 Public Way Construction and Use - Permit Required; Standard Specifications, Drawings and Design Standards.

(1) As used in this section, "work affecting the public way" includes, but is not limited to: installation, construction, maintenance, or removal of any structure, pipe, pole, conduit, culvert, facility, including a communications facility, as defined by section 3.005 of this code, or other wire line utilities in, on, or over a public way; construction, reconstruction, grading, oiling, repair, opening or excavation of a public way for any purpose; but does not include the construction of public improvements performed under a contract executed by the city manager or work performed by city employees under the city manager's direction.

(2) No person, municipal utility, or operator of a communications system shall do work affecting a public way without first obtaining a permit from the city engineer. A license issued pursuant to section 3.410 of this code shall not constitute authorization to perform work affecting a public way; all such work shall require a permit pursuant to this section.

(3) Work affecting a public way shall be performed in accordance with this code, the standard specifications, drawings and design standards adopted pursuant to section 7.085, administrative rules issued by the city manager pursuant to section 2.019 of this code, sound engineering and design practices and such other reasonable conditions required by the city engineer to protect the public health, safety and welfare, including proof that the contractor performing the work is licensed and bonded for the work being performed.

(4) If an applicant for a permit or the contractor performing the work for the applicant:

(a) Is delinquent in performing the obligations required by sections 7.290 to 7.308 on permits previously issued, the city engineer may refuse to issue a new permit for other work affecting a public way until the delinquency is corrected; and

(b) Has been delinquent in performing the obligations required by sections 7.290 to 7.308 more than two times in the previous 24 months, the city engineer may require a bond or other reasonable security, which may be a cash deposit, be posted with the city against which the city may collect its cost of enforcing this code and the conditions of any permit issued thereunder against the permittee.

(Section 7.290 amended by Ordinance No. 19393, enacted July 28, 1986; Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996; Ordinance No. 20083, enacted April 28, 1997; Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.295 Public Way Construction and Use - Permit Application.

(1) Unless otherwise permitted in section 7.305, application for a permit to perform work affecting a public way shall be made to the city engineer on forms provided by the city engineer. The city engineer may waive the requirement to complete the application form and pay the permit fees and restoration deposit when the amount of work to be done in the public way does not warrant the cost of processing the application.

(2) No permit which authorizes the cutting of street surfaces shall be issued for installation of any utility or facility for a period of five years from the time the street is constructed or resurfaced, unless otherwise approved by the city engineer pursuant to rules adopted under section 2.019 and section 7.302(6) of this code.

(3) If the city engineer determines that it is proper that the proposed work be done, the application shall be approved. After approval, and upon receipt of the required fee, deposit, and proof of license and bond required by section 7.290(3), the city engineer shall issue a revocable permit.

(4) The city engineer may deny a permit for work affecting a public way if the applicant has failed to comply with permit conditions or with provisions of this chapter or applicable administrative rules on two or more occasions in the previous 24 months, or if the city engineer determines that the work is incompatible with other uses of the public way.

(5) If the city engineer denies a permit, or revokes a permit because of a failure to comply with the provisions of this chapter or because another public purpose is to be accomplished which is inconsistent with the permittee's use of the public way, the applicant or permittee shall have the right of appeal to the city manager as provided in section 2.021 of this code.

(6) Permits issued pursuant to this section do not authorize vehicle parking in the public way. If the proposed construction necessitates parking vehicles in the public way, the applicant must make an application for a parking space rental permit in accordance with and subject to section 5.350.

(Section 7.295 amended by Ordinance No. 19393, enacted July 28, 1986; Ordinance No. 19488, enacted June 22, 1987; Ordinance No. 19969, enacted July 21, 1994; Ordinance No. 20083, enacted April 28, 1997; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; and amended by Ordinance No. 20236, enacted November 26, 2001, effective December 26, 2001.)

7.297 Public Way Construction and Use - Insurance Requirement; Safety.

(1) No permit shall be issued under section 7.295 unless an applicant agrees to save the city, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit and provides proof of the license and bond required under section

7.290. The acceptance of a permit under 7.290 shall constitute such an agreement by the applicant whether the same is expressed or not.

(2) A permittee shall preserve and protect from injury other permittees' facilities in the public way, the public using the public way and any adjoining property, and take other necessary measures to protect life and property including but not limited to buildings, walls, fences, trees, utilities, or facilities that may be subject to damage from the permitted excavation. A permittee shall be responsible for all damage to public or private property or facilities resulting from its failure to properly protect people and property and to carry out the work.

(Section 7.297 amended by Ordinance No. 19393, enacted July 28, 1986; and Ordinance No. 20083, enacted April 28, 1997; Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.299 Public Way Construction and Use - Permit Suspension or Revocation.

(1) The city engineer may suspend or revoke a permit issued under section 7.295 if:

(a) The permittee fails to restore the public way in a safe and timely manner;

(b) The permittee fails to comply with any condition of the permit or any requirement of this code or administrative rules adopted by the city manager;

(c) An error or omission is discovered in the plans;

(d) New conditions at the location of the work are discovered that require changes to design, capacity or location of the work subject to the permit;

(e) The work that is the subject of the permit is not completed in a timely manner.

(2) The city engineer shall suspend rather than revoke a permit under this section if it reasonably appears that the cause for suspension or revocation can be remedied in a reasonable period of time.

(Section 7.299 added by Ordinance No. 19393, enacted July 28, 1986; amended by Ordinance No. 20083, enacted April 28, 1997; and Ordinance No. 20236, enacted November 26, 2001, effective December 26, 2001.)

7.300 Public Way Construction and Use - Permit Fees.

(1) The fee for a permit required by section 7.290 shall be set by the city manager pursuant to section 2.020 of this code in an amount sufficient to fully recover all of the City's costs related to processing the application for the permit and inspecting the work during and after completion of the work.

(2) Except when the permittee is a municipal utility, a franchisee, or a licensee otherwise obligated to compensate the city for on-going use of the public way, in addition to the fee required in subsection 7.300(1), a fee for leaving any structure, pipe, conduit, culvert or facility in the public way may be set by the city manager pursuant to section 2.020 of

this code to provide a reasonable return to the public for the permitted on-going use of the public way.

(Section 7.300 amended by Ordinance No. 19393, enacted July 28, 1986; Ordinance No. 19951, enacted January 31, 1994, effective March 2, 1994; and Ordinance No. 20083, enacted April 28, 1997.)

7.302 Public Way Construction and Use - Location of Facilities.

(1) All underground pipes and conduits in the public way shall be laid a minimum depth of 30 inches below the city-established street grade or alley grade and 30 inches below ground level in utility easements, unless otherwise approved by the city manager or designee. If it becomes necessary for the proper or necessary public use of any public way that any structure, pipe, conduit, culvert or facility heretofore installed or constructed be removed or relocated or that any use made thereof by a municipal utility, franchisee, licensee, or permittee be discontinued, the city engineer shall give written notice to the owner of the street tree, pipe, conduit, culvert or other facility to remove the same within a reasonable time. If the owner fails to comply with such notice, the city may remove or relocate the same and charge the costs of removal or relocation to the owner.

(2) A permit issued under sections 7.290 and 7.295 shall require that all utilities and communications facilities be located underground in the manner provided in subsection (1) of this section if the permit is associated with new residential or new commercial development.

(3) A permit issued under section 7.295 may require the permittee to locate the facility or utility jointly with other providers and to reserve public space in privately opened trenches to ensure adequate conduit capacity for city operational and infrastructure needs.

(4) A permit issued under section 7.295 may require the permittee to install capacity in excess of the permittee's or other providers' needs, as determined by the city. The permittee may negotiate with other licensed providers, which are co-locating with the permittee, for sharing the use and costs associated with the joint use in open trenches.

(5) A licensee or owner of above-ground wires, cables or lines located in a right-of-way that is subject to a capacity-enhancing improvement project shall install conduit crossings at the time of the improvement project.

(6) The administrative rules issued by the city manager hereunder shall include, but not be limited to:

(a) Requirements for prior notice to other licensed providers before performing work, and establishment of criteria to address the frequency that street openings will be permitted;

(b) Location criteria and regulations for installation of above-ground facilities, such as junction boxes, controllers, distribution centers, etc. within the general right of way, including the ability to require under-grounding.

(c) Standards for when and under what conditions existing above-

ground utilities and telecommunications facilities shall be placed underground;

(d) Standards for conduit size, location and capacity to be installed by providers, which may be different for different areas of the city, class of street, location, and other factors;

(e) Standards that ensure initial providers in an area provide extra capacity for later providers and a procedure that enables the initial provider to recover a portion of its costs incurred, is not discriminatory, does not prevent competition in service delivery, or become a barrier to other providers;

(f) Criteria for providing exceptions to the requirement that later providers utilize the extra capacity of initial providers;

(g) The format for the manner in which data on the construction and location of services is provided to the city;

(h) Procedures that ensure facility operators and providers belong to the Oregon Utility Notification Center (OUNC) and can document their ability to provide locating service for their facilities;

(I) Requirements for public notice;

(j) Traffic control plans; and

(k) Requirements for indemnity, performance bonds and project completion bonds.

(Section 7.302 added by Ordinance No. 19393, enacted July 28, 1986; amended by Ordinance No. 20083, enacted April 28, 1997; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.305 Public Way Construction and Use - Municipal Utilities, Franchisee, and Licensee Opening Permits and Inspection.

(1) If the applicant for a permit required by section 7.290 is a municipal utility, franchisee, or licensee, the city engineer's stamp of approval on the applicant's drawings for the proposed work shall constitute issuance of a permit. The work performed under such a permit shall comply with the requirements of subsection 7.290(3). The permittee's drawings shall designate in the permit, with accurate dimensions shown, the part of the public way to be used and the permittee shall strictly conform to the designation so made, unless re-approval is given by the city engineer.

(2) The permittee's approved drawings must be at the work site for which the permit is issued before work begins and remain there during the performance of the work. After completion of the work, the permittee shall furnish the city engineer as-built plans showing the location and depths of all installations.

(3) The permittee's work under the permit is subject to inspection during and after completion of the work. Regarding the relocation of the public way, a city inspector may require changes in construction technique or workmanship if hazardous conditions are present and may halt construction if it does not conform to the approved drawings or permit

conditions. That a city inspector directed a change in construction techniques or workmanship shall not relieve the permittee of its obligations under section 7.290 to 7.308.

(4) In an emergency, a permittee may open a public way to repair or install an underground utility system, provided, before commencing work the permittee enters each excavation on the communication system of the Oregon Utility Notification Center, and provided the permittee obtains the permit required by subsection 7.305(1) promptly thereafter.

(5) A permittee shall pay the established permit fees. The permit fees shall be paid monthly, before the 15th day of the month following inspection.

(Section 7.305 amended by Ordinance No. 19393, enacted July 28, 1986; and Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.307 Public Way Construction and Use - Repair.

(1) Except where waived by the city engineer, the permittee shall temporarily patch with asphalt material any backfilled trench in any vehicle, bicycle, or pedestrian travel lane the same day of trench backfill, until the final pavement repair is placed. Temporary trench repair shall be maintained sufficiently to prevent settlement or irregular surface. Temporary trench repairs in pedestrian areas shall not impede the safe and accessible travel for individuals with disabilities under the American with Disabilities Act. Within 60 days of completion of the work and at permittee's expense the permanent pavement repair of the public way to city standards shall be done by a qualified contractor or by the permittee if the city engineer has determined the permittee has the resources and trained personnel. If the permittee fails to make the permanent pavement repair within the time specified, the city may make the repair and charge the cost thereof to the permittee without prior notification.

(2) A permittee shall be responsible to promptly remove and clean all excess earth, stone, crushed rock, rubbish, debris and any unused material from the public way surface that results from work performed. As work progresses, all public ways shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All cleanup shall be at the expense of the permittee. Upon failure to do so, within 24 hours after notification, the city may do the work and charge the cost thereof to the permittee. If in the judgment of the city engineer a hazardous or dangerous condition exists that affects the public health, safety and welfare, the notification requirement may be waived and the city may take necessary corrective action to remove the hazardous conditions and charge the costs thereof to the responsible party without prior notification.

(3) A permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutterline. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all

times maintained.

(Section 7.307 added by Ordinance No. 19393, enacted July 28, 1986; and amended by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.308 Public Way Construction and Use - Opening Public Ways; Restoration and Maintenance.

(1) If the work permitted is in an unimproved public way, the permittee shall be responsible for restoration and maintenance of the area of the public way affected by the work for one year after completion of the work.

(2) If the work permitted is in an improved public way, the permittee shall be responsible for restoration and maintenance of the area of the public way affected by the work. If more than one permittee has performed work in the same area, the city engineer shall allocate the responsibility and cost for restoration and maintenance taking into account the nature of the work done, and of the deterioration that has occurred, when each permittee performed the work, the kind of equipment and construction techniques used, and such other factors as the engineer deems relevant.

(3) Upon reasonable notice under the circumstance, if the permittee fails to restore and maintain the public way affected by its work, the city may perform the work and charge the cost to the permittee.

(Section 7.308 added by Ordinance No. 19393, enacted July 28, 1986; amended by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.309 Public Way Construction and Use - Culvert Installations. If the permit is for installation of a culvert for access to property, the culvert must be installed in the size designated by the city engineer and in compliance with the requirements of subsection 7.290(3). All culverts are considered temporary and may be removed at any time as provided in section 7.302.

(Section 7.309 added by Ordinance No. 19393, enacted July 28, 1986.)

7.340 Television Cable Trenching.

(1) For new construction or property development where the city requires that television cable be placed underground, the developer of the property shall give the local general manager or systems engineer of the cable franchise holder at least 30 days written notice of such construction or development. The notice shall include a copy of any final plat, the particular date on which open trenching will be available for the cable franchise holder's installation of conduit, pedestals and/or vaults, and laterals to be provided at the cable holder's expense. Trenching within the public way shall conform to sections 7.290 to 7.308 of this code.

(2) Notice of trench availability shall be given by certified mail, or other method which establishes the time of receipt by the cable franchise holder. Costs of trenching and easements required to bring service to

the development shall be borne by the developer. If the cable franchise holder fails to install its conduit, pedestals and/or vaults, and laterals within two (2) working days of the date the trenches are available as designated in the notice, and the trenches are subsequently closed after the two-day period, the cost of new trenching shall be borne by the cable franchise holder.

(3) If the developer fails to provide the trench for the television cable and the required notice to the cable franchise holder, the city engineer may cause the trench to be provided either with city forces or by private contract, and shall give the cable franchise holder 30 days written notice of the date the trench will be available for installation of conduit, pedestals and/or vaults, and laterals.

(4) If the trench is provided through use of city forces, the developer shall be charged the amount of actual cost, as established by the city engineer. This shall consist of the basic costs of the work, including supervision, and whatever additional costs any extraordinary aspect of the work entails.

(5) If the trenching is necessitated under subsection (3) above and the work is performed under a private contract, the developer shall be charged the amount actually paid to the contractor, plus a charge for supervision as established by the city manager.

(6) The finance officer may collect the amount of any charges from the developer or cause the charge to be assessed against the property, and subject to the lien and foreclosure procedures prescribed in sections 2.540 to 2.547 of this code.

(7) In the event the cable franchise holder fails to install its conduit, pedestals and/or vaults, and laterals within two (2) working days of the date the trenches are available as designated in the notice given by the city and the trenches are subsequently closed after the two-day period, the cost of new trenching shall be borne by the cable franchise holder.

(Section 7.340 added by Ordinance No. 18372, enacted April 18, 1979, and amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

PUBLIC EASEMENT REQUIREMENTS

7.350 **Easements - Standards.** Public utility easements shall be provided for all city-maintained facilities. Property owners served, or to be served by a utility within a public utility easement shall have access to the public utility easement to construct, install, maintain, and repair private utility services.

(Section 7.350 added by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

Sidewalk, Curb and Access Connection Requirements

7.360 **Sidewalks, Curbs, Access Connections - Standards**. All sidewalks, curbs and access connections shall be built in accordance with this chapter 7, adopted standard specifications, drawings and design standards and built to grades and alignments approved by the city engineer.

(Section 7.360 amended by Ordinance No. 19946, enacted December 6, 1993, effective June 6, 1994; amended by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.365 **Americans with Disability Act (ADA) Ramp Standards.** Sidewalk construction shall provide an accessible pedestrian circulation system that includes access ramps for street crossings compliant with Title II of the Americans with Disability Act and in accordance with city specifications established by the city engineer.

(a) Applications for privately engineered public improvements shall include the design and construction of ADA access ramps within and adjacent to the development site.

(b) The developer shall either complete the construction of the ADA access ramps prior to placing the project on warranty or enter into an agreement with the city and deposit funds with the city engineer to cover the cost of construction and inspection, plus contingency, of the ramps within the time limit established by the city engineer. If the ramps are not constructed during the warranty period, the city engineer may draw on these funds to complete the work.

(c) Property owners of corner lots and lots perpendicular to and facing t-intersections shall construct ADA access ramps as part of their sidewalk construction.

(Section 7.365 added by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.370 **Sidewalks - Owners to Fill Ground Between Curb and Sidewalk**. It shall be the duty of all property owners to fill and maintain with earth, soil, brick, gravel, clay, loam, cinders, mulching material or Portland cement concrete, but not asphaltic concrete, the space between the curb and sidewalk in front of their property and to the curb line of the street at the intersections to a level and grade with the curb and sidewalk unless an approved stormwater facility is constructed between the curb and sidewalk. Subject to sections 4.832 and 4.833 of this code, and sections 7.635 to 7.650, a ground cover or tree may be used.

(Section 7.370 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.375 **Sidewalks, Curbs and Access Connections - Owner's Responsibility to Maintain**.

(1) The owner of land abutting a sidewalk shall maintain the sidewalk and

curb in good repair and safe condition. Access connection(s) shall be maintained in good repair and safe condition by the owner of land served by the access connection(s).

(2) The owner shall be liable for injury, damage or loss to person or property caused by the owner's negligent failure to comply with subsection (1) of this section.

(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 defective or dangerous condition of any sidewalk, curb or access connection.

(4) The city engineer may serve notice on the owner to reconstruct or repair the abutting or adjoining sidewalk, curb or access connection as conditions may require. A notice to reconstruct or repair and the owner's duty to repair shall be governed by sections 7.152 to 7.154 of this code.

(5) Neither the duty of the owner to maintain the sidewalk, curb and access connection in good repair and safe condition, nor liability for owner's failure to do so is dependent upon the notice from the city to reconstruct or repair.

(6) The owner shall defend and hold harmless the city from all claims for loss or damage arising from the owner's failure to comply with subsection 7.375(1).

(Section 7.375 amended by Ordinance No. 19393, enacted July 28, 1986; amended by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.380 **Sidewalks - Privately Constructed**. Whenever a property owner having received notice to construct a sidewalk or on his or her own initiative, shall desire to either construct the sidewalk himself/herself or employ a private contractor to do so, the property owner shall secure a permit from the office of the city engineer. The property owner shall notify the city engineer's office when the sidewalk has advanced to a point where it is ready to be inspected before the material is placed.

(Section 7.380 administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

7.385 **Sidewalk, Curb and Access Connection Construction - Permit Required**.

(1) Unless the construction, reconstruction or alteration is included in a publicly or privately engineered public improvement, an owner, builder or contractor shall obtain a construction permit from the city engineer prior to constructing, reconstructing or altering any sidewalk, curb or access connection. Applications for construction permits shall be submitted on the forms adopted by the city engineer.

(2) Construction permit applications shall be reviewed and approved in accordance with this chapter 7 and the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways.

(3) When constructing a structure or an addition to a structure, concurrent with the issuance of the building permit for the construction of a

structure or an addition to a structure, the owner, builder or contractor to whom the building permit is issued shall*:*

(a) Obtain a sidewalk construction permit for the construction of a sidewalk within the dedicated right-of-way for the full frontage in which a sidewalk is not in good repair or does not exist; and,

(b) Obtain an access connection construction permit for the construction of any new access connection(s); and,

(c) Complete construction of the sidewalk and/or access connection within the building construction period or within one year after the sidewalk and access connection construction permit is issued, whichever is the lesser.

(4) Sidewalk construction shall be exempted from the requirements of this section for building permits for:

(a) Construction adjacent to streets that have not been improved to city street standards.

(b) Additions or alterations of single-family dwelling units and duplexes.

(c) All other structures, additions or alterations in which sidewalk construction costs would exceed 10% of the value of the proposed construction.

(5) The city manager or designee may waive the requirement for sidewalk construction within rights-of-way where future street or public utility improvements are planned, where there is insufficient right-of-way, or where topographical and other physical constraints exist.

(6) If a sidewalk, curb or access connection is not constructed within the time required by this section, then the city may construct it for the full street frontage in front of the property and proceed with the construction, assessment and collections of costs as provided in section 7.154 of this code.

(Section 7.385 amended by Ordinance No. 19946, enacted December 6, 1993, effective June 6, 1994; by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.390 **Storage of Materials in Streets During Sidewalk Construction**.
Whenever the city engineer shall issue a permit to build or repair a sidewalk in the city, the city engineer shall include in the permit permission to use the street abutting the sidewalk for the purpose of storing material used in the repair and building of the sidewalk for which the permit is issued. In no event shall more than one-fourth of the street width from curb to curb be used for the purpose of storing material used in the construction or repair of a sidewalk. No person shall store in the streets material to be used in the construction or repair of sidewalks without first obtaining the permit. Upon violation of this section, the permit may be revoked and all material removed at once from the street.

7.395 **Curbs - Requirements**. All curbs shall conform to the official street grades and built and constructed to city specifications.

7.400
(Section 7.400 repealed by Ordinance No 20390, enacted August 13, 2007, effective September 14, 2007.)

7.405 **Driveways - Prohibited Locations, Special Requirements and Revocation**.
(Section 7.405 repealed by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.407 **Equivalent Street Assessment**.

(1) In addition to any application or permit fee required by section 7.385, when the owner of real property is required to obtain an access connection permit to take access onto a street for which the city has given a credit under subsections 7.730(3) and 7.730(4) based upon the size of the street improvements that would be assessable under subsection 7.175(2)(b) and section 7.180, the owner shall pay to the finance officer an equivalent assessment and any other fees required by the city before taking access to the street. If the property has delinquent local improvement assessments against it, before issuing the access 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 size of streets assessed to benefitted property, based on the greater of the credit given under subsection 7.730(3) or (4) for the street to which access is proposed or the cost at the time of taking access of local improvement assessments for similar streets. As used in this subsection "cost" includes the expenses identified in section 7.170. Any person aggrieved by the city engineer's determination of the equivalent assessment may seek its review before a hearings official by following the procedures in section 2.021 of this code. The petitioner shall have the burden of proof in such review.

(2) Nothing in this section shall prevent the city from creating a local improvement district for street improvements under section 7.175 upon a determination that an existing street improvement 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 street improvements. Such assessments shall be calculated upon the greater of the amount of credit given by the city or the cost of constructing a similar street improvement at the time of the formation of the local improvement district. If a property has been given an equivalent assessment under subsection 7.407(1) it may not be assessed again for the same street improvements.

(3) Except as otherwise provided in subsection 7.180(5)(f), equivalent

assessments required by subsection 7.180(5) shall be paid at the time of development by the person who receives a permit to develop the parcel as described in subsection 7.180(5)(e). The equivalent assessment shall be calculated by the city engineer in accordance with section 7.180(5), if applicable, and the engineer's estimate of what the costs of the improvement would be if the improvement were constructed at the time of the development giving rise to the obligation to pay the equivalent assessment.

(4) In lieu of paying the equivalent assessment at the time of issuance of the curb cut permit or upon the occurrence of one of the events described in subsection 7.180(5)(e), except where the development involves creation of a subdivision, the person obligated to pay the equivalent assessment may execute and deliver to the finance officer an agreement to pay the equivalent assessment in installments. The finance officer may accept an 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.

(5) The equivalent assessment required by this section shall be used for street purposes and shall be in addition to all other fees and assessments required by this code.

(Section 7.407 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20214, enacted October 23, 2000, effective April 23, 2001; Ordinance No. 20236, enacted November 26, 2002, effective May 26, 2002; Ordinance No. 20390, enacted August 13, 2007, effective February 14, 2008; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010; Ordinance No. 20469, enacted December 15, 2010, effective June 17, 2011.)

7.408 Access Connections – Purpose and Applicability

(1) The purpose of the access connection requirements set forth in sections 7.410, 7.420 and 7.430 of this code is to:

(a) Balance the need for a safe and efficient roadway system against the need to provide ingress and egress to developed land adjacent to the street.

(b) Reduce conflict points in the transportation system by managing, the number, spacing, location and design of access connections.

(c) Preserve intersection influence areas to allow drivers to focus on traffic operational tasks, weaving, speed changes, traffic signal indications, etc.

(d) Reduce interference with through movement, caused by slower vehicles exiting, entering or turning across the roadway, by providing turning lanes or tapers and restricting certain movements.

(2) Unless otherwise provided in this chapter 7 or in chapter 9 of this code, the requirements set forth in sections 7.410, 7.420, and 7.430 of this code apply to the design, construction, reconstruction or alteration of any access connection.

(Section 7.408 added by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.410 Access Connections – Number, Width and Shared.

(1) Unless there is an access agreement between development sites, a development site shall be entitled to one access connection.

(2) Unless provided otherwise by this chapter 7 or by the vision clearance or maximum driveway width requirements in chapter 9 of this code, an access connection shall be no wider than 20 feet.

(3) The city engineer or engineer's designee may approve a request for an exception to subsections (1) and/or (2) of this section.

(a) An applicant requesting more than one access connection for a single development site and/or requesting that an access connection be wider than 20 feet shall submit an Alternative Traffic Safety Study on the form adopted by the city engineer.

(b) An exception to subsections (1) and/or (2) of this section may be approved only when the Alternative Traffic Safety Study demonstrates that the access connection(s) will:

1. Provide safe ingress and egress to the development site;
2. Not negatively impact the efficiency of the public right-of-way; and,
3. Will not result in a hazard to the bicycle, pedestrian or vehicular traffic using the right-of-way.

(c) In no event shall the width of a single access connection serving a one or two family dwelling, including a shared access connection, exceed 35 feet. For an access connection serving any other type of development, in no event shall the width of a single access connection, including a shared access connection, exceed 50 feet.

(d) In no event shall the total number of access connections and, for multiple access connections, the total combined width of the access connections exceed the following:

Single Street Frontage	Number of Access Connections	Total Combined Width of Access Connections
40 ft. or less	1	20 feet
Over 40 ft. to 100 ft.	2	20 ft. +50% of frontage over 40 ft.
Over 100 ft.	3	50 ft. +30% of frontage over 100 ft.

(4) The width of an access connection for single family dwelling or duplex shall be no less than 12 feet.

(5) The width of an access connection for multi-family, commercial and employment and industrial developments shall be no less than 20 feet.

(6) Upon application of the involved property owners, more than one development site may share a single access connection. The city engineer or engineer's designee may approve a shared access connection upon a finding that it will result in safe ingress and egress for users thereof and the general public and will not negatively impact the efficiency of the public right-of-way.

(7) Two attached single-family dwellings that have side-by-side parking and that face the same streets shall share a single access connection. The city engineer or engineer's designee may grant an exception to this requirement if a single access connection would be unsafe, or negatively impact the efficiency of the public right-of-way, or result in a hazard to the bicycle, pedestrian or vehicular traffic using the right-of-way.

(8) Property owners of shared access connections shall execute a recordable agreement providing for the shared use of the access connection.

(9) Any person aggrieved by administrative action of the city engineer or the engineer's designee taken under the provisions of this section 7.410 may appeal the action in the same manner as provided in section 5.045 of this code.

(Section 7.410 amended by Ordinance No. 17250 enacted February 10, 1975; by Ordinance No. 18971, enacted May 24, 1982; by Ordinance No. 19061, enacted November 22, 1982; by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; by Ordinance No. 19779, enacted June 10, 1991, effective July 10, 1991; by Ordinance No. 20236, enacted November 26, 2001, effective December 26, 2001; by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010; by Ordinance No. 20528, enacted May 14, 2014, effective June 23, 2014.)

7.415 Driveways - Existing Driveways.

(Section 7.415 repealed by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.420 Access Connections – Location.

(1) Access Connections to all Street Classifications. Access connections to all street classifications shall be located in accordance with the following standards:

(a) No access connection shall be located to encompass a municipal utility. An access connection may encompass a municipal utility if the applicant either:

1. Executes a public utility easement for the encompassed

municipal utility; or

2. Agrees to accept financial responsibility for relocating and/ or adjusting the encompassed municipal utility.

(b) Except when an existing lot or parcel frontage is located entirely within an area where the adjacent street grade is over fifteen percent (15%), no access connection shall be located in areas where the street grade is over fifteen percent (15%). If an existing lot or parcel frontage is located entirely within an area where the existing street grade is over fifteen percent (15%), one access connection may be permitted at the point of lowest grade percentage.

(c) If a parcel has frontage on two or more streets of different street classifications, the access connection shall access the street with the lowest classification. The access connection can access the street with the higher classification if the applicant can demonstrate (1), (2) or (3):

1. Both of the following conditions are met:
   a. The proposed access connection is abutted by two or more directional travel lanes or an auxiliary deceleration lane; and
   b. The applicant proposes a restricted movement access connection, including but not limited to median barriers or directional in/out barriers.
2. Physical conditions preclude locating the access connection on the street with the lower classification. Such conditions may include, but are not limited to, topography, trees, existing buildings or other existing development on the subject property or adjacent property.
3. The access connection for a parcel with frontage on an arterial or major collector can be located consistent with the requirements of EC 7.420(2)(a)-(e).

(d) Access connections located within five feet of an existing alley connection may be merged with the alley pavement. The combined connection width shall not exceed 35 feet. A public access easement shall be recorded and submitted to the city upon issuance of a permit to construct the access connection.

(2) Access Connections to Arterial and Major Collector Streets. In addition to the standards set forth in this EC 7.420(1), access connections to arterial and major collector streets shall be located in accordance with the following standards.

(a) Except when an existing lot or parcel is located entirely within the intersection influence area, no access connection to an arterial or major collector street shall be located within the intersection influence area. If an existing lot or parcel is located entirely within the intersection influence area, an access connection, of minimum width, onto an arterial or major collector street will be permitted

provided the access connection is located along the property line furthest from the intersection.

1. Influence areas of controlled intersections shall be based on the street classification as set out in the chart below. The influence area for the primary street shall be measured from the centerline of the secondary street; the influence area for the secondary street shall be measured from the centerline of the primary street. If the intersecting streets have the same street classification, both streets are considered primary streets.

Primary Street Classification	Secondary Street Classification
Major Arterial – 250 ft.	Minor Arterial – 200 ft.
Minor Arterial – 200 ft.	Major Collector – 150 ft.
Major Collector – 150 ft.	Neighborhood Collector – 100 ft.

2. Influence areas of partially controlled intersections shall be based on the street classification as set out in the chart below. The influence area for the primary street shall be measured from the centerline of the secondary street, the influence area for the secondary street shall be measured from the centerline of the primary street. If the intersecting streets have the same street classification, both streets are considered primary streets.

Primary Street Classification	Secondary Street Classification
Major Arterial – 150 ft.	Minor Arterial – 75 ft.
Minor Arterial – 100 ft.	Major Collector – 75 ft.
Major Collector – 75 ft.	Neighborhood Collector – 50 ft.

(b) Access connections shall be spaced based on the street classification as set out in the chart below. The spacing area shall be measured from the edge of one access connection to the leading edge of another access connection.

Street Classification	Spacing of Access Connections
Major Arterial	200
Minor Arterial	150
Major Collector	100

(c) Access connection spacing requirements will be reduced up to a maximum of 50% of the required spacing, upon applicant request, if either 1. or 2.:

1. Both of the following conditions are met:
   a. The proposed access connection is abutted by two or more directional travel lanes or an auxiliary deceleration lane; and
   b. The applicant proposes a restricted movement access connection, including but not limited to median barriers or directional in/ out barriers.
2. Physical conditions preclude locating the access connection on the street with the lower classification. Such conditions may include, but are not limited to, topography, trees, existing buildings or other existing development on the subject property or adjacent property.

(d) Applicant with an existing lot or parcel as of April 10, 2010, that cannot meet the spacing requirement, does not qualify for a reduction in the spacing requirements, and has no other access to the lot or parcel, will be allowed one minimum-width restricted movement access connection.

(e) Unrestricted access connections shall be aligned with connections across the street or have a minimum 50-foot offset so that opposing turns from the access connection and from a center turn lane can be executed in front of one another.

(3) Access Connections to Local and Neighborhood Collector Streets. In addition to the location standards set forth in EC 7.420(1), access connections to local and neighborhood collector streets shall be located in accordance with the following standards:

(a) Lots and parcels at intersections shall have the access connection begin no less than 20 feet from the end of the radius of the curb, or 20 feet from the property corner if there is no curb.

(b) A safety island of not less than 22 feet of full height curb shall in all cases be provided between access connections under one ownership.

(Section 7.420 (Driveways – General Construction Requirements) repealed and a new Section 7.420 added by Ordinance No. 20457, enacted March 8, 2010, effective April 10, 2010.)

7.425 Driveways - Near Alleys.

(Section 7.425 repealed by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.430 Access Connections – General Design and Construction.

(1) Access connections shall be designed and constructed in accordance with the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways.

(2) Access connections shall be designed and constructed so that vehicles served by the access connection can be parked entirely within the

private property lines of the property served by the access connection.

(3) Access connections can be designed and constructed to extend beyond a private property line in the following circumstances:

(a) The adjacent property owner gives written approval, or,

(b) In the opinion of the city engineer or the engineer's designee, such an extension is necessary for safe ingress and egress for the traveling public.

(4) Access connections shall be designed and constructed perpendicular to the public way. If existing physical conditions, such as, but not limited to, topography, trees, and parking bays, preclude constructing the access connection perpendicular to the public way, the access connection shall be designed as warranted by the traffic conditions and existing conditions.

(5) Unless explicitly authorized by the construction permit, the access connection paving shall not extend beyond the property line into a street right-of-way at an intersection or crossroad. Construction permit authorization for such an extension can be conditioned on construction of a traffic island or curb to provide for the protection of municipal facilities.

(6) Where standard gutters and curbs have not been installed, the width of the access connection shall be measured along the property line and shall comply with the same requirements as specified in section 7.410 for curb cuts. Permits shall not be issued for a surface improvement or paving on the street right-of-way between access connection unless a concrete curb or other physical obstruction, of a design satisfactory to the city engineer, is constructed and maintained by the applicant along his or her property line, so that the entrance and exit of vehicles to and from the applicant's property will be restricted to the established access connection.

(7) Where standard curbs and gutters have not been installed, the applicant shall pave the access connections or other areas within the right-of-way with asphaltic concrete or other material approved by the city engineer or engineer’s designee so that it merges with the street pavement; the paving shall be adequate and suitable for the traffic to be carried as determined by the city engineer. The extended paving between the property line and the street pavement shall be to the established grade or other slope fixed by the city engineer to provide for proper runoff. If the applicant's paving is extended beyond the property line into a street right-of-way at an intersection or crossroad, the city engineer may require the applicant to construct a suitable traffic island or curb to provide for the protection of such municipal facilities as may be necessary.

(8) All access connections between the curb line and the back edge of the sidewalk shall be constructed of Portland cement concrete. The concrete of the access connection including the sidewalk section shall be constructed in accordance with construction specifications and

standard drawings adopted by the city engineer.

(Section 7.430 amended by Ordinance No. 17250, enacted February 10, 1975; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.435 Access Connections – Permit Alteration and Revocation; Connection Closure.

(1) The city manager or manger's designee may, after providing notice to affected property owners and tenants, alter or revoke an access connection permit issued pursuant to section 7.385 of this code if:

(a) The access connection is not constructed according to specification; or

(b) The access connection is not maintained in a safe manner; or

(c) The access connection becomes hazardous due to traffic congestion. The determination that an access connection is hazardous to the public's use of the right-of-way shall be based on traffic engineering principles and traffic investigations.

(2) Any person aggrieved by administrative action of the city manager or the manager's designee taken under the provisions of section (1) may appeal the action in the same manner as provided in section 5.045 of this code.

(3) If an access connection not permitted pursuant to section 7.385 of this code is deemed by the city manager or manager's designee to be hazardous to the public's use of the right-of-way, the access connection shall be relocated and/or reconstructed by the owner(s) of the property served by the subject access connection. The determination that an access connection is hazardous to the public's use of the right-of-way shall be based on traffic engineering principles and traffic investigations.

(a) Upon determination by the city manager or manager's designee that an existing access connection is a hazard to the public's use of the right-of-way, the city shall send the owner(s) of the property served by the subject access connection notice of the determination.

(b) The owner(s) of the property served by the subject access connection may appeal the determination in accordance with section 5.045 of this code.

(c) If no appeal is filed within the time specified in section 5.045 of this code, the owner(s) of the property served by the subject access connection shall have 90 days from the date of the notice to relocate and/or reconstruct the access connection to conform to the provisions of this code and adopted design standards.

(d) If the owner fails to relocate and/or reconstruct the access connection to conform to the notice within 90 days, the city manager or manager's designee will cause the relocation and/or

reconstruction to be completed and all expenses will be assessed against the property owner.

(Section 7.435 (Driveways – Use of Public Property) repealed and new Section 7.435 added by Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

7.445 Use of Public Right-of-Way.

(1) Public right-of-way shall not be used for private commercial purposes except pursuant to a revocable permits issued by the city manager or manager's designee.

(2) The city manager is authorized to issue a revocable permit for construction or location of a retaining wall, steps, terracing, plantings, planters, walkways, projecting building features, and other appurtenances to be installed within a public right-of-way at the property owner's risk and subject to the following conditions and requirements.

(a) Adequate plans and specifications for the proposed installation are submitted to the city engineer.

(b) Conditions approved by the city engineer shall be attached to and made a part of the application and plans.

(c) That the structures comply with the applicable codes or ordinances of the city with regard to structural safety, sanitation, setback, and fire safety requirements.

(d) That the requests be evaluated by the city engineer in regard to any adverse effect on adjoining properties.

(e) That there be no interference with the use of the public way for vehicle, bicycle, pedestrian, existing or proposed utilities and other authorized uses.

(f) That said permit shall be revocable by the city on demand.

(g) All plantings shall be first approved by the city manager or designee.

(h) A fee for the permit shall be charged to the applicant as set by the city manager under section 2.020 of this code.

(i) The applicant shall agree to the foregoing conditions for the approval of said permit.

(3) The city manager is authorized to permit special sidewalk surfaces over and above those allowed in the standard specifications and drawings for paving; provided, however:

(a) The surfacing has been approved by the city engineer from the standpoint of non-skid requirements.

(b) Blocks, bricks, and other sidewalk materials are imbedded to prevent rocking or differential settlement.

(c) The surfacing will be maintained by and at the expense of the abutting property owner.

(d) If the surfacing proves hazardous in the opinion of the city engineer, the surfacing will be replaced with material either

meeting city specifications or approval.

(Section 7.445 amended by Ordinance No. 19393, enacted July 28, 1986; by Ordinance No. 19946, enacted December 6, 1993, effective June 6, 1994; Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007; Ordinance No. 20458, enacted March 8, 2010, effective April 10, 2010.)

Off-Street Parking Districts

7.465 **Off-Street Parking - Survey and Report**. The development of an off-street public parking facility shall be initiated by the council, either on its own motion or on the petition of the owners of property comprising more than one-half the area to benefit specially from the facility excluding any area occupied by parking facilities deemed not benefited by section 7.475. The motion of the council shall direct the city manager to make a survey and written report on the project and file it with the finance officer. Unless the council shall direct otherwise, the report shall contain, when applicable, the following matters:

(a) A map or plat showing the general nature, location and extent of the proposed off-street parking facility and the land to be assessed for the payment of the cost thereof.

(b) Plans, specifications and estimates of the work to be done.

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

(d) An estimate of the unit cost of the improvement to the specially benefited properties.

(e) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to the properties specially benefited.

(f) The description of each parcel of real property, or portion thereof, to be specially benefited by said off-street parking facility, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof.

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

(Section 7.465 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.470 **Off-Street Parking - Council Action**. After the city manager's report shall have been filed with the finance officer, the council may by motion approve the report, modify the report and approve it as modified, require the city manager to supply additional or different information for the improvement or abandon the improvement. The council shall fix the boundaries of the assessment district and determine which properties located within the district are specially benefited by the off-street parking facility.

7.475 **Off-Street Parking - Resolution and Notice of Intention**. After the council shall have approved the city manager's report as submitted or modified, the council shall, by resolution, declare its intention to make the off-street parking facility improvement, provide the manner and method of carrying out the improvement and shall direct the finance officer to give notice of the improvement by publishing in a newspaper of general circulation in the city, a notice of its intent to establish an off-street motor vehicle parking facility. The notice shall be published once a week for two consecutive weeks making

three publications in all, and will also be posted in three public places in the city for not less than two consecutive weeks prior to said hearing. A copy of the notice shall be mailed by certified mail to the record owner of each parcel of real property within the boundaries proposed to be assessed, at the address of the record owner as contained in the assessment records in the office of the assessor of the county. In the event there is a purchaser under a land sale contract, the land sale contract purchaser shall be deemed to be the owner. The notice shall contain the following information.

(a) Where filed. The report of the city manager is on file in the office of the finance officer and is subject to public examination.

(b) Hearing. The council or the council's designee shall hold a public hearing on the proposed off-street parking facility improvement on a specified date, which shall not be earlier than 14 days following the first publication of notice at which objections to the improvement shall be heard by the council or the council's designee; and that if prior to the hearing there shall be presented to the finance officer written objections by more than one half of the owners of property proposed to be assessed, based either on percentage of area or on the percentage of assessed within the proposed assessment and benefited area, then the improvement will be abandoned for at least one year.

(c) Benefited property. A statement that a description of the real property to be specially benefited by the improvement, the owners of the property and the city manager's estimate of the unit cost for the improvement to be assessed against the property to be specially benefited and the total cost of the improvement to be paid for by special assessments to benefited properties is on file and subject to public inspection in the office of the finance officer.

(d) Private off-street parking facilities. Real property within the benefited area on which there is located an off-street parking facility operated as a profit-making venture for the use of the general public, as distinguished from a parking lot owned or leased and operated primarily as a service and convenience for customers of a particular business, for which a charge is made to the public by the owner or operator thereof, shall not be deemed benefited by the proposed off-street parking facility improvement for which the hearing is held. However, upon the subsequent change of use of the exempted property so that the same is not used for an off-street parking facility operated as a profit making venture for the use of the general public, as distinguished from a parking lot owned or leased and operated primarily as a service and convenience for customers of a particular business, then the property may be assessed an equivalent assessment of its proportionate share of the cost of the off-street parking facilities in the manner provided in sections 7.500 and 7.505.

(e) Equivalent assessments. Equivalent assessments on previously exempt real property shall be the product of the square feet of the area previously exempt times the rate used to compute the original

assessments times the ratio of the remaining life of the bonds over the original life of the bond issue for a given district. Funds received from the new assessments shall be reserved by the city for the retirement of bonds issued to construct the parking facility where the equivalent assessment is being levied, or the funds may be reserved for repayment of assessments paid in cash in the district where the equivalent assessment is levied, but in no event will the funds paid on the equivalent assessment be used to reduce the original assessments among the property owners in the district.

(Section 7.475 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.480 **Off-Street Parking - Hearing; Council Decision**. At the time of the public hearing, or upon the council's review of the hearing record when the hearing is conducted by the council's designee, on the proposed improvement, if the written objections shall represent less than the amount of real property required to defeat the proposed improvement, on the basis of the hearing of written and oral objections, if any, the council may, by motion, at the time of the hearing or at a time thereafter, order the improvement to be carried out in accordance with an ordinance providing therefor, or the council may, on its own motion, abandon the improvement.

(Section 7.480 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.485 **Off-Street Parking - Manner of Work Specified in Ordinance**. The council may provide in the improvement ordinance that the construction work may be done in whole, or in part, by the city, by a contract, or by any other government agency, or by any combination thereof.

7.490 **Off-Street Parking - Bids and Contracts**. The council may, in its discretion, direct the finance officer to advertise for bids for construction of all, or part of the improvement project on the basis of the council-approved city manager's report and before the passage of the ordinance, or after the passage of the ordinance and before the public hearing on the proposed improvement, or at a time after the public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear objections to the proposed improvement. In the event that part of the work of the improvement is to be done under contract bids, then the council shall determine the time and manner of advertisement for bids and the contracts shall be let to the lowest responsible bidder; provided that the council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall provide for the bonding of all contractors for the faithful performance of a contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city.

7.495 **Off-Street Parking - Special Hearing of Objections**. If the council finds, on opening bids for the work, that the lowest responsible bid is substantially in excess of the city manager's estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of the bid, and it may direct the finance officer to publish one notice in a newspaper of general circulation in the city.

7.500 **Off-Street Parking - Notice of Proposed Assessment**. Before levying assessment for an off-street parking facility the council shall cause the finance officer to mail to each real property owner affected by the proposed assessment a notice which shall designate the location of the off-street parking facility for which an assessment is to be made, a description of each parcel of real property proposed to be assessed with the name of the owner thereof and the address of the owner as shown on the assessment records of the assessor of the county and the amount of the assessment. The notice shall specify the time and place, when and where the council or designee will meet to hear the objections to the proposed assessment, and shall request the property owners interested to be present at the time and place to make their objection to the proposed assessment, if any. The notice shall be sent by certified mail to each property owner affected by the proposed assessment at the address above indicated, not less than ten days prior to the time when the ordinance levying the assessment shall be considered by the council. A copy of the notice shall be likewise posted by the finance officer on the bulletin board at the city hall.

(Section 7.500 amended by Ordinance No. 16656, enacted November 6, 1972, and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.505 **Off-Street Parking - Assessment Ordinance**. After the public hearing on the proposed improvement and after the council has moved to proceed with the improvement, and after giving notice of the proposed assessment as provided in section 7.500, it may pass an ordinance assessing the various parcels of real property to be specially benefited with their apportioned share of the cost of the improvement but the passage of the assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and the total cost thereof is determined.

(Section 7.505 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.510 **Off-Street Parking - Method of Assessment and Alternative Methods of Financing**. The council in adopting a method of assessment may:

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

(b) Use a method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.

(c) Authorize payment by the city of all, or part, of the cost of the improvement.

7.520 **Off-Street Parking - Notice of Actual Assessment**. Within ten days after the ordinance levying assessments has been passed, the finance officer shall send by registered or certified mail a notice of assessment to the record owners of the assessed real property. The notice of assessment shall state the date of the assessment ordinance and that on the failure of the owner of the property assessed to pay the assessment within ten days the assessment shall become a lien against the assessed property. Failure of the owner to make application for payment in installments within ten days of the notice or to pay the assessment in full within 60 days from the date of entering the assessment on the city lien docket records, shall subject the lien to foreclosure. The notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment. Interest shall be paid on all assessments from the date of entry of the assessment on the city lien docket records.

(Section 7.520 amended by Ordinance No. 19232, enacted March 12, 1984, effective September 12, 1984; Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 19653, enacted November 22, 1989, effective May 22, 1990.)

7.525 **Off-Street Parking - Semiannual Installment Payments**. The council shall set forth in the assessment ordinance the schedule of installment payments for which the property owner may make application and agree to pay the assessment, with interest at the rate then authorized by section 2.022 of this code for unpaid assessments. The application shall also contain a statement by lots or blocks, or other convenient description of the real property of the applicant assessed for the improvement.

(Section 7.525 amended by Ordinance No. 19232, enacted March 12, 1984, effective September 12, 1984, and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.530 **Off-Street Parking - Lien Records and Foreclosure Proceedings**. After passage of the assessment ordinance by the council, the finance officer shall enter in the docket of city liens a statement of the amounts assessed on each parcel of real property, together with a description of the improvement, the name of the record owner and the date of the assessment ordinance. Upon entry in the lien docket, the amounts entered shall become a lien and charge on the respective parcels which have been assessed for the improvement. All assessment liens shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at the rate then authorized by section 2.022 of this code until paid on all amounts not paid within ten days from the date of the assessment ordinance. After expiration of 60 days from the date of the assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law

of the state, or as provided in the charter or ordinances of the city; provided, however, that the city may, at the discretion of the city manager or the manager's designee, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state to redeem the property.

(Section 7.530 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.535 **Off-Street Parking - Errors in Assessment Calculations**. Claimed errors in the calculation of assessments shall be called to the attention of the finance officer, who shall determine whether there has been an error in fact. If the finance officer shall find that there has been an error in fact, he or she shall recommend to the council an amendment to the assessment ordinance to correct the error. Upon enactment of the amendment, the finance officer shall make the necessary correction in the docket of city liens and send a correct notice of assessment by certified mail.

(Section 7.535 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998.)

7.540 **Off Street Parking - Deficit Assessments**. In the event that an assessment is made before the total cost of the improvement is ascertained and the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare the deficit and:

(a) Determine that the cost of preparing a proposed deficit assessment does not justify proceeding under paragraph (b) of this section and authorize the expenditure of city funds to pay the deficit; or

(b) Prepare a proposed deficit assessment. The council shall set a time for the council or its designee to hear objections to the deficit assessment and shall direct the finance officer to notify the owners of each parcel of real property to be assessed, as provided in section 7.500. After considering evidence and argument presented at the hearing, the council shall make a just and equitable assessment by ordinance, which shall be entered in the docket of city liens as provided by section 7.530. Notice of the assessment shall be sent to the owner and collection of the assessment shall be made in accordance with section 7.530.

(Section 7.540 amended by Ordinance No. 16960, enacted January 7, 1974, and Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.541 **Off-Street Parking - Excess Assessments**. If assessments are made on the basis of estimated cost, and upon completion of the improvement the cost is found to be less than the estimated cost, the excess amount shall be entered on the lien docket as a credit on the appropriate assessment and shall be apportioned and credited to the owners of the assessed property on

the same basis as the original assessment. In the event that any assessment has been paid in full, the owner of the assessed property at the time the council declares the excess shall be paid a cash refund of their proportionate share of the excess amount.

(Section 7.541 added by Ordinance No. 16960, enacted January 7, 1974, and Ordinance No. 19393, enacted, July 28, 1986, effective January 28, 1987.)

7.543 **Off-Street Parking - Fund for Bond Redemption**. After bonds have been sold to finance the construction of an off-street parking facility, all payments of the assessments, principal and interest, for the facility and any other revenue pledged for the facility's debt retirement, shall be deposited in a separate fund for bond redemption established to retire the bonded debt, principal and interest, issued for the construction of the facility. The funds deposited shall be invested and paid as provided by state law unless otherwise directed by ordinance of the council.

(Section 7.543 added by Ordinance No. 19232, enacted March 12, 1984, effective September 12, 1984; and amended by Ordinance No. 19651, enacted November 20, 1989.)

7.550 **Off-Street Parking - Abandonment of Proceedings**. The council shall have full power and authority to abandon and rescind proceedings for improvements made under sections 7.465 to 7.565 at any time prior to the final completion of the improvements. If liens have been assessed on real property under the procedure, they shall be cancelled, and payments made on the assessments shall be refunded to the owner(s) of the property at the time the council abandons or rescinds the proceedings.

(Section 7.550 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.555 **Off-Street Parking - Curative Provisions**. No improvement assessment shall be rendered invalid by reason of a failure of the city manager's report to contain all of the information required by section 7.465 or by reason of a failure to have all of the information required to be in the improvement ordinance, the assessment ordinance, the lien docket or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the record owner of real property as required by sections 7.465 to 7.565, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining. The council shall have the power and authority to remedy and correct all matters by suitable action and proceedings.

(Section 7.555 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.560 **Off-Street Parking - Reassessment**. Whenever an assessment, deficit assessment or reassessment for an improvement which has been made by the city has been, or shall be, set aside, annulled, declared or rendered void,

or its enforcement restrained by a court of competent jurisdiction, or when the council shall be in doubt as to the validity of the assessment, deficit assessment, or reassessment, or a part thereof, then the council may make a reassessment in the manner provided by the laws of the state, provided, however, that the council or its designee may conduct any hearings as provided in sections 7.480 and 7.500.

(Section 7.560 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)

7.565 **Off-Street Parking - Application to New or Existing Facilities**. The procedures described in sections 7.465 to 7.565 shall be applicable to either the development by the city of an off-street parking facility or to the purchase or financing of an existing off-street parking facility.

Trees and Foliage in Right-Of-Way

7.635 **Foliage - Permit to Plant**.

(1) No person shall plant, or allow to be planted in a public right-of-way, pedestrian right-of-way, or pedestrian easement, a tree, shrub, or plant without obtaining a permit at least ten days prior thereto.

(2) The city manager, or the manager's designee, shall approve the type, location, spacing, and number of trees, shrubs or plants prior to issuance of the permit.

(3) A permit shall not be required hereunder for the planting of any flowering or fruit bearing plant, other than a tree, that does not violate the requirements of subsections 6.010(I) and (j) of this code.

(Section 7.635 amended by Ordinance No. 19146, enacted May 25, 1983, and Ordinance No. 19393, enacted July 28, 1986.)

7.640 **Foliage - Certain Trees Prohibited**. No person shall plant, or cause to be planted within the city, any species of tree within the right-of-way of a street, avenue, highway or alley, pedestrian right-of-way or pedestrian easement which is not listed in the street tree species/variety list adopted by the city manager pursuant to section 2.019 of this code, unless planting of the proposed species is specifically authorized in writing by the city manager or the manager's designee.

(Section 7.640 amended by Ordinance No. 20056, enacted August 5, 1996, effective September 4, 1996.)

7.650 **Foliage - Trimming, Pruning or Removal**.

(1) Subject to the provisions of this section, all trees, shrubs, plants and vegetation growing within or projecting into the right-of-way of a street, avenue, highway, alley, pedestrian right-of-way or pedestrian easement, may be trimmed, pruned or removed at any time by the city, or the city may require the person responsible to abate any existing

nuisance under chapter 6 of this code.

(2) Except as provided in subsection (3) of this section, no person shall trim or prune a tree growing within the public right of way in a manner not in compliance with the standards adopted by the city manager. The city manager shall adopt such standards as part of rules promulgated in accordance with section 2.019 of this code. The standards shall be designed to ensure that trees are not trimmed or pruned in a manner that causes damage to the tree or diminishes its health.

(3) The prohibitions set forth in subsection (2) of this section do not apply to EWEB when the trimming or pruning is necessary in order to protect its lines or crews.

(Section 7.650 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987; and Ordinance No. 20056, enacted August 5, 1996, effective September 6, 1996.)

Systems Development Charges

7.700 **SDC - Purpose**. The purpose of the systems development charge is to impose an equitable share of the public cost of capital improvements upon those developments that create the need for or increase the demands on capital improvements.

(Section 7.700 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991.)

7.702 **SDC - Scope**. The systems development charge imposed by sections 7.700 to 7.740 is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or the cost of complying with requirements or conditions imposed upon a land use development. A systems development charge is to be considered in the nature of a charge for service rendered or to be rendered, a service hookup charge, or a charge for facilities provided or to be provided.

(Section 7.702 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991.)

7.705 **SDC - Systems Development Charge Established**.

(1) Unless otherwise exempted by the provisions of sections 7.700 to 7.740 or other local or state law, effective July 1, 1991 a systems development charge is hereby imposed upon all new development within the city, and any structure inside or outside the boundary of the city that connects to or otherwise uses the wastewater sewer system or storm sewer system of the city.

(2) Systems development charges for each type of capital improvement provided by the city may be created and shall be established by council resolution. When required by intergovernmental agreement authorized by council, a systems development charge for a capital improvement provided by another government shall be established by council resolution.

(Section 7.705 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991;

amended by Ordinance No. 20166, enacted September 15, 1999; and Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002.)

7.710 SDC - Methodology.

(1) The methodology used to establish or modify a reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, gifts or grants from federal or state governments or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish or modify the public improvement charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and shall provide for a credit against the improvement fee for the construction of any qualified public improvement.

(3) The methodology may also provide for a credit as authorized in subsection 7.730(5).

(4) Except when authorized in the methodology as provided in subsection 7.710(3), the fees required by this code which are assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision are separate from and in addition to the systems development charge and shall not be used as a credit against such charge. Nothing in this subsection shall prevent the collection of a system development charge in connection with a local improvement assessment or charge in lieu of a local improvement district assessment.

(5) The methodologies for establishing the systems development charge shall be established by resolution of the council and may be adopted and amended concurrent with the establishment or revision of the systems development charge. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of an adopted specific cost index or on a modification to any of the factors related to rate that are incorporated in the established methodology. The city manager may adopt changes to such a cost index or rate factor by administrative order pursuant to section 2.020 of this code.

(Section 7.710 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; and amended by Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002.)

7.715 SDC - Compliance With State Law.

(1) The revenues received from the systems development charges shall be

budgeted and expended as provided by state law. The accounting of such revenues and expenditures required by state law shall be included in the city's Comprehensive Annual Financial Report required by ORS chapter 294.

(2) The capital improvement plan required by state law as the basis for expending systems development charge revenues for capital improvements shall be the Eugene Capital Improvements Plan (CIP) and the Metropolitan Area General Plan as adopted by the council (Plan), other city facilities plans that may include SDC-eligible capital projects, or the capital improvement plan adopted by another governmental body which was used by the city manager in establishing the methodology for the systems development charge**,** provided such capital improvement plan is consistent with the CIP and the Plan.

(Section 7.715 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20166, enacted September 15, 1999; and vy Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002.)

7.720 <u>SDC - Collection of Charge</u>.

(1) After adoption of the applicable methodology, a systems development charge is payable upon issuance of:

(a) A building permit;

(b) A development permit for development not requiring the issuance of a building permit; or

(c) A permit to connect to the water, wastewater sewer or stormwater management facilities or in anticipation of the issuance of such a permit at the time of levying a local improvement district assessment for wastewater sewer or stormwater management facility.

(2) If development is commenced without an appropriate permit or connection is made to the water system, wastewater sewer system or stormwater management facility without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.

(3) The city manager or the manager's designee shall collect the systems development charges from the permittee. The city manager or the manager's designee shall not issue any permit or allow connection described in subsection 7.720(1) until the charge has been paid in full or until provision for installment payments has been made within the limits prescribed in subsection 7.190(2).

(4) Except as provided in this subsection, the obligation to pay the unpaid systems development charge and interest thereon shall be secured by a lien against the property upon which development is to occur. Such liens shall arise upon issuance of the permit requiring the system development charge and shall be entered on the city's lien docket and the debt secured thereby may be collected in the same manner as allowed by law for street improvement assessment liens. In lieu of such

lien, upon application of the permittee the obligation to pay the unpaid systems development charge and interest thereon may be secured by property, bond, deposits, letter of credit or other security acceptable to the city manager or the manager's designee.

(5) When the obligation to pay the unpaid systems development charge is imposed at the time of levying a local improvement district assessment for wastewater sewer or of paying an equivalent assessment for wastewater sewer and the obligation is secured by a lien against the real property being developed, the person paying the systems development charge in installments may apply for deferral of the payments as provided in section 7.195.

(6) Except as provided in this subsection, SDC fees paid are not refundable and, in the case of an agreement to pay SDCs in installments, the terms of the agreement may not be modified. A partial refund of SDC fees will be made or a modification of an installment agreement will be allowed when an active development permit is canceled or expires without being used, a change of design of an active development permit is approved that results in a less intense use of the property, or property previously developed as a manufactured home park is partitioned and redeveloped. No portion of the administrative fees will be refunded, and an additional administrative charge may be imposed to cover the cost of calculating and processing the partial refund.

(Section 7.720 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20166, enacted September 15, 1999; by Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002; and by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.725 **SDC - Exemptions**. The following are exempt from the systems development charge imposed in section 7.705:

(a) Except for the systems development charge attributable to the wastewater sewer system and the stormwater management facilities, all development which existed or for which the city had received a completed building permit application on or before June 30, 1991 or for which a building permit was issued before that date.

(b) Any conducting of a building or mining operation, or making of a physical change in the use or appearance of a structure or which does not increase the usage of any capital improvement or which does not create the need for additional capital improvements. However, the SDC methodology adopted under section 7.710 of this code may require that a proposed development be reviewed by the city in order to determine whether such an impact will be incurred. If this review occurs and it is determined that there will be no increased usage of any capital improvements and no additional capital improvements will be needed, then an administrative charge shall be imposed for this review.

(c) Housing for low-income persons, subject to the following limitations:

(1) Commencing with the 1998 fiscal year, and continuing each fiscal year thereafter, the city manager or designee may waive a base amount totaling $115,000 annually of system development charges for housing for low-income persons.
(2) Each fiscal year that there is a change in the rates for the system development charges for residential development, the base amount for that fiscal year shall be adjusted in an amount proportionate to that change.
(3) If any portion of the authorized base amount remains unallocated at the end of a fiscal year, that portion shall be added to the authorized base amount for the next fiscal year.
(4) In the event the property for which an exemption is granted ceases to be utilized for housing for low-income persons or is sold or transferred for use other than housing for low-income persons within five years from the date the certificate of exemption is recorded, the person to whom the exemption was granted shall be required to pay to the city the amount of the exempted systems development charges, plus interest at the statutory rate for interest on a judgment from the date the certificate was recorded.
(5) Upon issuance of the certificate of occupancy, the city shall record the certificate of exemption documenting the date and amount of the exemption with the Lane County Recorder's office.
(6) A transfer from an owner to whom an exemption was granted to the initial lessee under a lease to purchase agreement shall not be deemed a transfer of ownership for purposes of this subsection.
(7) The exemption authorized herein does not include an exemption from the regional wastewater systems development charge.
(8) For purposes of this subsection (c), "low-income persons" means:
    1. With regard to rental housing, persons with an income at or below 60 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development; and
    2. With regard to home ownership housing and lease to purchase home ownership housing, persons with an income at or below 80 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.

(Section 7.725 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20093, enacted October 15, 1997, effective November 14, 1997; by Ordinance No. 20166, enacted September 15, 1999; by Ordinance No. 20175, enacted November 8, 1999, effective December 8, 1999; by Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002; and by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.730 SDC - Credits.

(1) As used in this section and in the definition of "Qualified public improvements" in section 7.010 the word "contiguous" means: in a public way which abuts.

(2) When development occurs which does not change the use of a building in its entirety and which must pay a system development charge under section 7.705 of this chapter, the system development charge for the existing use(s) shall be calculated and if it is less than the system development charge for the proposed use(s), the difference shall be the system development charge. If the change in use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required; however, no reimbursement or credit shall be given and an administrative charge shall be imposed.

(3) When development occurs that will change the use(s) of a building in its entirety and which must pay a system development charge under section 7.705 and/or an administrative charge per the SDC methodology adopted under section 7.710 of this chapter, the system development charge for the previous most intense verifiable use per system (i.e. parks, stormwater, transportation, wastewater) shall be calculated and if it is less than the system development charge for the proposed use, the difference shall be the system development charge. If the change in use results in the system development charge for the proposed use being less than the system development charge for the previous most intense verifiable use per system, no system development charge shall be required for that system; however, no reimbursement or credit shall be given and an administrative charge shall be imposed.

(4) A credit shall be given for the cost of a qualified public improvement associated with a development. The credit provided for by this subsection shall apply only to the improvement fee imposed for the type of improvement being constructed, and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee. Credit may be granted only for the cost of that portion of such improvement that exceeds the government unit's minimum standard facility size or the capacity needed to serve the particular development project or property.

(5) The methodology may provide for a credit against the public improvement fee, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development's demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be constructed at city expense under the then-existing council policies.

(6) Except to the extent that a capital improvement for which a credit is given is part of the phasing of a larger project and that the credit

received against the systems development charge is greater than the charge for the phase where the capital improvement is constructed, credit shall not be transferable from one development to another.

(7) Credit shall not be transferable from one type of capital improvement to another.

(Section 7.730 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20175, enacted November 8, 1999, effective December 8, 1999; and Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002.)

7.731 SDC – Credits for Multiple-Unit Housing.

(1) A developer of a multiple-family residential project consisting of 5 or more dwelling units may receive a credit of up to fifty percent of the appropriate systems development charges otherwise due under Section 7.720 in connection with the development if all of the following conditions are met:

(a) The developer constructs, pays for or contributes to the cost of a capital improvement on the Plan described in subsection (2) of section 7.715 of this Code, and the capital improvement would be eligible for SDC funding under the Plan;

(b) The improvement is located within the boundaries of the neighborhood association in which the development is being constructed;

(c) Credit for the construction of or contribution to the improvement is permissible under state law; and

(d) The City Council, the developer, and the applicable neighborhood association board of directors each:

1. Agree that the improvement will mitigate one or more impacts resulting from the multiple-family residential project in the neighborhood; and
2. Approve the grant of SDC credit in exchange for the construction of, or contribution to, the improvement.

(2) The credit described in this section may be applied only toward the system development charge attributable to the same system (transportation, wastewater, stormwater, parks) as the improvement which the developer constructs or to the cost of which the developer contributes.

(Section 7.731 added by Ordinance No. 20556, enacted July 13, 2015, effective August 20, 2015.)

7.735 SDC - Appeal Procedures.

(1) As used in this section "working day" means a day when the general offices of the city are open to transact business with the public.

(2) A person aggrieved by a decision required or permitted to be made by the city manager or the manager's designee under sections 7.700 to 7.730 or a person challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure by filing with the public works staff at the city's permit center a written request for consideration by the hearings officer and by paying the fee for an appeal established under section 2.020 of this code. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with

subsection (4) of this section.

(3) An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. Appeals of any other decision must be filed within 15 working days of the date of the decision.

(4) The appeal shall state:

(a) The name and address of the appellant;

(b) The nature of the determination being appealed;

(c) The reason the determination is incorrect; and

(d) What the correct determination of the appeal should be or how the correct determination should be derived.

An appellant who fails to file such a statement within the time permitted waives his/her objections, and his/her appeal shall be dismissed.

(5) Unless the appellant and the city agree to a longer period, an appeal shall be heard by a hearings officer within 15 working days of the receipt of the notice of intent to appeal. At least ten working days prior to the hearing, the city shall mail notice of the time and location thereof to the appellant.

(6) The hearings officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence he/she deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(7) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be or how a correct determination should be derived.

(8) The hearings officer shall issue a written decision within ten working days after the hearing date and the decision of the hearings officer shall b e final.

(Section 7.735 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; amended by Ordinance No. 20248, enacted April 8, 2002, effective May 9, 2002; and by Ordinance No. 20390, enacted August 13, 2007, effective September 14, 2007.)

7.740 **SDC - Prohibited Connection**. No person may connect to the wastewater sewer or storm sewer system of the city unless the appropriate systems development charge has been paid or the installment payment method has been applied for and approved.

(Section 7.740 added by Ordinance No. 19773, enacted May 13, 1991, effective July 1, 1991; and amended by Ordinance No.20166, enacted September 15, 1999.)

Penalties

7.990 **Penalties - Specific**. Violation of any section in this chapter is punishable by fine not to exceed $500.00.

(Section 7.990 amended by Ordinance No. 19393, enacted July 28, 1986, effective January 28, 1987.)