

## **Title 3 REVENUE AND FINANCE**

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## **Chapter 3.04 PUBLIC CONTRACTS**

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### **3.04.010 Contract review board.**

The city council is designated as the local contract review board pursuant to ORS 279.055.

(Ord. 1999-6 § 2 (part): prior code § 1.852(1))

### **3.04.020 Adoption of rules.**

The city council may by resolution adopt and amend Local contract review rules.

(Ord. 1999-6 § 2 (part): prior code § 1.852(2))

## **Chapter 3.08 UNCLAIMED PROPERTY**

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**3.08.010 Designated abandoned when.**

All unclaimed property other than motor vehicles coming into the possession of any department of the city shall be deemed abandoned after a period of six months from the time it is received.

(Prior code § 1.880)

**3.08.020 Disposal by public sale.**

Property deemed abandoned pursuant to this chapter shall be disposed of by public sale unless the city council by resolution shall direct its transfer to the city for use by the city or other governmental agency, or shall by resolution direct its destruction.

(Prior code § 1.882)

**3.08.030 Description of property to be published prior to disposal.**

Prior to disposal of property deemed abandoned pursuant to this chapter, the city administrator shall cause to be published in a newspaper of general circulation within the city, at least ten (10) days prior to disposition, a notice describing the property to be disposed of, which notice shall state the proposed method of disposition and, if such disposition is to be by public sale, the date, time and place of public sale at which the property may be purchased by the highest bidder.

(Prior code § 1.884)

**3.08.040 Claim by owner.**

At any time prior to disposition pursuant to this chapter, property deemed abandoned may be claimed by its rightful owner. The city administrator shall cause a record of all dispositions of abandoned property to be kept and shall issue the necessary receipts for property disposed of by public sale.

(Prior code § 1.886)

**Chapter 3.12 SPECIAL ASSESSMENTS**

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### **3.12.010 Definitions.**

As used in this chapter:

"City engineer" means the duly appointed incumbent of the office of city engineer of the city, if such an office exists and is then occupied. If such office shall not exist or shall be vacant, the council shall designate an engineer or firm of engineers in connection with any proposed improvement, in which event the term "city engineer" shall be held to refer to the engineer or firm of engineers so designated. In the event that work is completed as a joint venture with the State Highway Commission, Clackamas County, or any other governmental unit, and that engineer's services will be provided by such other governmental body, the council may accept engineering work from such other body, and in such event may designate a proper and qualified individual to complete the balance of the engineer's report referred to in Section 3.12.030.

"Property to be specially affected" means the property which will be assessed for any improvements undertaken pursuant to the terms of this chapter and Chapters 12.04 and 12.08.

"Public rights-of-way" include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

"Within the city" means territory over which the city now has or acquires jurisdiction for the exercise of its powers.

(Prior code § 2.000)

### **3.12.020 Public rights-of-way.**

- A. Jurisdiction. The city has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city Charter and state law.
- B. Scope of Regulatory Control. The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way.

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The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

- C. City Permission Requirement. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and permits.
- D. Obligations of the City. The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

(Prior code § 2.001)

### **3.12.030 Declaration of intention—Report from city engineer.**

Recommendations. Whenever the council decides to make street, sewer, sidewalk, or other public improvements to be paid for in whole or in part by special assessments according to benefits, the council shall by motion declare its intention to initiate such improvement and direct the city engineer to make a survey and written report of such project and file the same with the recorder within the time set forth by the council in the motion. If adequate design data is on hand, the council may direct the city administrator to make the written report. Whether the report is made by the city administrator or the city engineer, it shall be known as the "city engineer's report" for the purposes of this chapter. Public improvements may be undertaken on petition filed with the council and signed by the owners of two-thirds of the property to be specially affected by the improvement contemplated. Upon the filing of such petition, the council shall forthwith direct the city engineer to make a survey and report in the same manner as if the procedure were undertaken on motion of the council. Such report shall contain:

- A. A plat or map showing the general nature, location, and extent of the proposed improvements and the lands to be assessed to pay all or any part of the costs thereof;
- B. Plans, specifications, estimates of the quantities of work to be done and the material required and a proposed time table for completion of various phases of the improvement;
- C. An estimate of the probable cost of the improvement, including legal, administrative and engineering costs attributable thereto;
- D. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the property specially affected, which recommendation shall be in accord with the provisions of Section 3.12.100;
- E. An estimate of the unit cost of the improvement to the specially affected properties derived from applying the recommended assessment method to the estimated cost of the improvement;
- F. A description of the location and assessed value of each lot, tract or parcel of land, or portion thereof, to be specially affected by the improvement, with the names of the record owners thereof and, when readily available, the names of other owners thereof as herein defined;
- G. A statement showing outstanding assessments against property to be assessed;
- H. Any other information required by the council.

(Prior code § 2.002)

### **3.12.040 Council consideration of city engineer's report.**

After the city engineer's report has been filed with the recorder, the council shall consider the report. The council may approve the report as submitted or may amend and approve the report as amended.

The council may direct the city engineer to furnish the council with a further report or information, or, on the basis of the city engineer's report, the council may by motion record its intention to abandon the improvement.

(Prior code § 2.004)

### **3.12.050 Notice of hearing on council—Approved city engineer's report.**

After the council has approved the city engineer's report as submitted or as amended by the council:

- A. It shall direct the recorder to cause to be published forthwith once each week for two successive weeks in a newspaper of general circulation, printed and published in the city, a notice stating:
  1. That the report, or amended report, of the city engineer, as approved by the council, is on file in the recorder's office, subject to examination, giving the date, no earlier than ten (10) days immediately following the first publication of notice, when any objections thereto will be considered by the council at a public hearing;
  2. That written remonstrances may be filed against the proposed improvements by the owners of property to be specially affected, at the office of the recorder not later than the scheduled time for the council hearing of objections to the proposed improvement;
  3. That the improvement will be abandoned for at least six months if there is presented a valid remonstrance of the owners of property proposed to be assessed two-thirds of the cost of the improvement;
  4. A description of the boundaries of the district to be specially affected by the improvement, giving the names of the record owners thereof and, when readily available, the names of other owners thereof;
  5. The estimated total cost of the improvement which is to be paid for by special assessment of affected property;
  6. The city engineer's estimated unit cost of the improvements to the specially affected property clearly indicating that this is an estimate and not an assessment.
- B. It shall also direct the recorder to send forthwith by mail the same notice, at his or her last known address, to each record owner and, when readily known, to each owner of property to be specially affected by the proposed improvement.
- C. It may, in its discretion, direct the recorder, upon the basis of the council-approved city engineer's report, to advertise for bids and designate the time at which such bids shall be opened, which time may be the time of the aforesaid hearing; provided, that no such contract shall be let until after objections to the council-approved city engineer's report are heard by the council; and provided, that in the letting of an such contract the provisions of Section 3.12.070 shall be followed by the council.

(Prior code § 2.006)

### **3.12.060 Hearing.**

At the aforesaid hearing, the council shall hear oral objections to the proposed improvement and shall consider any written remonstrances thereto. Written remonstrances of the owners of property proposed to be assessed two-thirds of the cost of the improvement shall defeat the proposed improvement, in which event, no further action to effect the improvement shall be taken for six months.

If the council, after hearing objections and considering any remonstrances, finds that there is not a sufficient remonstrance, it may proceed with the improvement.

(Prior code § 2.008)

**3.12.070 Manner of doing work—Contracts, bids and bonds.**

The council shall provide by resolution the time and manner of doing the work of such improvement and may provide for the city to do the work, or it may award the work on contract. In the event that the work is done under contract, bids shall be received after advertisement for such time as the council may determine on all such work, the estimated cost of which is more than five hundred dollars (\$500.00). The contract shall be let to the lowest responsible bidder, except that the council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The council shall provide for taking security by bond for the faithful performance of any contract let under its authority; and the provisions thereof, in case of default, shall be enforced by action in the name of the city.

(Prior code § 2.010)

**3.12.080 Special hearing when low bid substantially exceeds city engineer's estimate.**

If the council finds upon opening bids for the work of such improvements that the lowest responsible bid substantially exceeds the city engineer's estimate, it may in its discretion hold a special hearing of objections to proceeding with the improvement on the basis of such bid and may direct the recorder to publish reasonable notice thereof in a newspaper of general circulation, printed and published in the city.

(Prior code § 2.012)

**3.12.090 Assessment ordinance.**

When the council, after the aforesaid hearing or hearings, shall determine to proceed with the improvement, it shall pass an ordinance assessing the various lots, parcels and tracts of property specially affected thereby with their apportioned share of the cost of the improvement, together with an amount sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including, but not limited to, legal printing and consultant's fees. The ordinance shall set forth the time within which such assessment must be paid or bonded and the rate of interest which shall accrue on the unpaid assessments after said date. The assessment ordinance shall further provide the time within which bonded assessments must be paid, not to exceed thirty (30) years. The passage of such assessment ordinance may be delayed until the contract for the work is let, or the improvement completed and the total cost thereof determined.

(Prior code § 2.014)

**3.12.100 Method of assessment and alternative method of financing.**

The council in adopting a method of assessment of the costs of the improvement may:

- A. Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;
- B. Use any method of apportioning the sum to be assessed that is just and reasonable between the properties determined to be specially affected;
- C. Authorize payment by the city of all or any part of the cost of any such improvement when, in the opinion of the council, on account of topographical or physical conditions, unusual or excessive public travel, or other character of the work involved, or when the council otherwise believes the situation warrants it; provided, that the method selected creates a reasonable

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relation between the benefits derived by the property specially assessed and the benefits derived by the city as a whole.

Nothing herein contained shall preclude the council from using other available means of financing improvements, including federal or state grants-in-aid, sewer service charges or fees, or other types of service charges, revenue bonds, general obligation bonds, or other legal means of finance. In the event any of such other means of finance are used, the council may, in its discretion, levy special assessments according to benefits to cover any part of the costs of the improvement not covered by such means.

(Prior code § 2.016)

### **3.12.110 Appeal.**

Any person aggrieved by assessments made under this section may, within twenty (20) days from the passage of the ordinance levying the assessment, appeal therefrom to the circuit court of the state of Oregon for the county of Clackamas. Such appeal and the requirements and formalities thereof shall be heard, governed and determined and the judgment thereof rendered and enforced so far as is practical in the matter provided for appeals from reassessments contained in ORS 223.401 or as hereinafter amended. The result of such appeal shall be a final and conclusive determination of the matter of such assessment except with respect to the city's right of a reassessment.

(Ord. 2000-18 § 1: prior code § 2.018)

### **3.12.120 Lien recording, interest and foreclosure.**

There is established a record of the city to be kept by the recorder and to be known as the "docket of city liens." All properly assessed liens within the city shall be entered in this docket.

After the ordinance levying assessments has been passed, the recorder shall enter in the docket of city liens a statement of the respective amounts assessed upon each particular lot, tract or parcel of land with the names of the record owners thereof and, so far as readily known, the names of the owners thereof. Upon such entry in the lien docket, the amount so entered shall be a lien and charged upon the respective lots, tracts and parcels of land against which the same are placed. Such liens shall be first and prior to all other liens or encumbrances thereon whatsoever insofar as the laws of the state of Oregon allow. Interest shall be charged at the rate provided in the assessment ordinance upon all amounts not paid within the time specified in the assessment ordinance. The city may proceed to foreclose or enforce any lien pursuant to the provisions of this code, or any applicable provision of state statute at any time after one year from the date such lien assessment or installment becomes due and payable if bonded; otherwise, at any time after sixty (60) days from the time it is entered in the docket.

(Prior code § 2.020)

### **3.12.130 Notice of assessment—Bonding.**

Within ten (10) days after the ordinance levying assessment has been passed, the recorder shall send, by registered or certified mail, a notice of assessment to the record owner at his or her last known address, and, so far as readily known, to the owner of each lot, tract or parcel of land assessed. The notice shall state the time within which such assessment must be paid or bonded as provided in the assessment that assessments which are not paid or bonded within the time specified in the assessment ordinance shall bear interest at the rate specified in the assessment ordinance, which rate shall be set forth in the notice. The notice shall further state that if such assessments are not paid or bonded within the time stated in the notice, the property so assessed is subject to foreclosure and that the record owner

or other owner may make application to bond such assessment pursuant to the provisions of ORS 223.205—223.295, inclusive.

(Prior code § 2.022)

**3.12.140 Errors in assessment calculations.**

Claimed errors in the calculation of assessments shall be called to the attention of the recorder prior to any payment on account thereof. The recorder shall determine whether there is an error in fact. If he or she finds that there is an error in fact, he or she shall report the same to the council. The council may enact an amendment to the assessment ordinance to correct the error. Upon the enactment of such an amendment by the council, the recorder shall make the necessary correction in the docket of city liens and send by certified mail to the last known address of the owner a corrected notice of the assessment.

(Prior code § 2.024)

**3.12.150 Deficit assessment.**

If assessment is made before the total costs of the improvement are known, and it be found that the amount assessed is insufficient to defray the expenses of the improvement, the council may by motion declare such deficit and prepare a proposed deficit assessment. The council shall set a time for a hearing of objections to such deficit assessment and shall direct the recorder to publish a reasonable notice thereof in a newspaper of general circulation printed and published in the city. The council, upon such hearing, shall make a just and equitable deficit assessment by ordinance. Such deficit assessment shall be consolidated with the assessment in the lien docket in accordance with the provisions of Section 3.12.120. Thereafter, the provisions of Sections 3.12.130 and 3.12.140 shall be applicable with regard to such deficit assessment.

(Prior code § 2.026)

**3.12.160 Rebate.**

If, upon the completion of the project, it is found that any sum theretofore assessed upon any property is more than sufficient to pay the cost thereof, the council must ascertain and declare the same by ordinance, and when so declared, it must be entered in the docket of city liens as a credit upon the appropriate assessment. If any such assessment has been paid, the person who paid the same, or his or her legal representative, shall be entitled to the payment of any portion of the rebate credit which exceeds the assessment, by a warrant on the city treasury.

(Prior code § 2.028)

**3.12.170 Abandonment of proceedings.**

The council shall have full power and authority to abandon and rescind proceedings for improvements hereunder at any time prior to the final consummation of such proceedings and, if liens have been assessed upon any property under this procedure, they shall be canceled, and any payments made thereon shall be refunded to the payor, his or her assigns, or legal representatives.

(Prior code § 2.030)

### **3.12.180 Curative provisions.**

No improvement assessment shall be rendered invalid by reason of a failure of the city engineer's report to contain all of the information required by Section 3.12.030, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the owner of any property as required by Section 3.12.050, 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; and the council shall have the power and authority to remedy and correct all such matters by suitable action proceedings.

(Prior code 2.032)

### **3.12.190 Reassessment.**

Whenever an assessment, deficit assessment, or reassessment for any improvement, which has been or may be made by the city, has been or shall be hereafter set aside, annulled, declared or rendered void, or its enforcement refuted by any state or federal court having jurisdiction thereof, whether directly or by virtue of any decision of such court, or when the council shall be in doubt as to the validity of such assessment, deficit assessment, or reassessment or any part thereof, the council may make a new assessment or reassessment. Such reassessment shall be made in the manner provided by ORS 223.405 to 223.485.

(Prior code § 2.034)

### **3.12.200 Apportionment of assessments.**

- A. Application for apportionment of special assessments made pursuant to ORS 223.317 shall be submitted on forms provided by the city to the city manager and shall be accompanied by an application fee of twenty-five dollars (\$25.00).
- B. Upon receipt of an application to apportion a special assessment and a filing fee, the city manager shall review the application and determine if it complies with the requirements of ORS 223.317. If it complies, the city manager shall recommend to the council an equitable division of the assessment. The recommendation shall be based upon the original assessment formula unless the city manager finds that apportionment based upon the original assessment would impair the security for the balance owed or would be inequitable under the circumstances. The recommendation shall describe the various parcels of the entire tract and the amount of the unpaid assessment to be apportioned to each parcel.

(Ord. 2000-18 § 2: prior code § 2.035)

## **Chapter 3.16 SYSTEMS DEVELOPMENT CHARGES**

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### **3.16.010 Purpose.**

The purpose of the system development charge is to impose a portion of the cost of specified capital improvements upon those developments that create the need for or increase the demands on these capital improvements.

(Prior code § 2.600)

### **3.16.020 Scope.**

The system development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

(Prior code 2.605)

### **3.16.030 Definitions.**

For purposes of this chapter:

"Capital improvements" means facilities or assets used for:

1. Water supply, treatment and distribution;
2. Waste water and sewage collection, transmission, treatment and disposal;
3. Storm drainage and flood control;
4. Transportation;
5. Parks and recreation.

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"Development" means building, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), or annexing property into the city when water or sewer services are provided to the property annexed.

"Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 3.16.040.

"Land area" means the square footage of a parcel of land, not including that part of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

"Owner" means the owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

"Parcel of land" means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.

"Qualified public improvements" means a capital improvement that is:

1. Required as a condition of development approval;
2. Identified in the plan adopted pursuant to Section 3.16.080; and is either:
  - a. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
  - b. 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.

"Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 3.16.040.

"System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

(Prior code § 2.610)

### **3.16.040 System development charge established.**

- A. System development charges shall be established and may be revised by resolution of the council.
- B. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all parcels of land within the city, and upon all lands outside the boundary of the city that connect to or otherwise use any capital improvement described in Section 3.16.030.

(Prior code § 2.615)

**3.16.050 Methodology.**

- A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing 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 no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council.
- D. The city shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge.

Written notice shall be mailed to persons on the list at least ninety (90) days prior to the first hearing to adopt or amend a system development charge, and the methodology supporting the adoption or amendment shall be available at least sixty (60) days prior to the first hearing to adopt or amend. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the city. The city may periodically delete names from the list, but at least thirty (30) days prior to removing a name from the list must notify the person whose name is to be deleted that a new written request for notification is required if the person wished to remain on the notification list.

(Ord. 2007-3 § 3; prior code § 2.620)

**3.16.060 Authorized expenditures.**

- A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B.
  - 1. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.
  - 2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 3.16.080.
- C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

(Prior code § 2.625)

**3.16.070 Expenditure restrictions.**

- A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

(Prior code § 2.630)

**3.16.080 Improvement plan.**

The council shall adopt a plan that:

- A. Lists the capital improvements that may be funded with improvement fee revenues;
- B. Lists the estimated cost and time of construction of each improvement; and
- C. Describes the process for modifying the plan.

(Prior code § 2.635)

**3.16.090 Collection of charge.**

- A. The system development charge is payable upon application for:
  - 1. A building permit;
  - 2. A development permit;
  - 3. A development permit for development not requiring the issuance of a building permit;
  - 4. A permit to connect to the water system;
  - 5. A permit to connect to the sewer system;
  - 6. A permit to connect or discharge into the storm drainage system;
  - 7. For multifamily developments, park system development charges are payable at the time of approval of the preliminary plat or plan;
- B. If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- C. If development is commenced or connection is made to the water, sewer, or storm drainage systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. The city recorder shall collect the applicable system development charge when an application that allows building or development of a parcel is submitted or when a connection to the water, sewer, or storm drainage system of the city is made.
- E. The city recorder shall not issue such permit or allow such connection:
  - 1. Until the charge has been paid in full; or
  - 2. Unless an exemption is granted pursuant to Section 3.16.100; or
  - 3. Until provision for payment of the system development charge by installment has been made pursuant to and in accordance with ORS 223.210 through ORS 223.215.

(Ord. 1999-7 § 1; prior code § 2.640)

**3.16.100 Exemptions.**

- A. Structures and uses established and existing on or before the effective date of the ordinance codified in this chapter are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Except as is provided in subsection (A)(1) of this section, structures and uses affected by this subsection shall pay the water or sewer improvement fee portion of the system development charge pursuant to the terms of this chapter upon the receipt of a permit to connect to the water or sewer system.

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1. Parcels of property within the city limits which, at the time of the enactment of said ordinance, utilize a septic or cesspool system as a means of disposal of sewage waste, or which use and maintain a well as a source of water to such parcel, shall receive a limited exemption as set forth below from the payment of system development charges when such septic systems and wells are abandoned and the applicant connects to municipal water and sewer systems. The exemption provided by this subsection shall consist of a credit equal to the system development charge otherwise chargeable at the time of application for one three-quarter inch water meter per parcel. For the purpose of determining the credit created by this subsection, a "parcel" is defined as a lot, parcel or other tract of land that is occupied or may be occupied by a structure or structures or other legal use in existence and as described on the date of passage of said ordinance. No exemption under this section will be given unless in accordance with the following time limitations:
    - a. All parcels or properties which at the time of enactment of said ordinance are within one hundred (100) feet of an existing water or sewer main, must abandon the existing well and/or sewer/septic systems, make application for connection to the city sewer and water system, and take substantial steps to connect to the city system prior to July 1, 1995;
    - b. Parcels or properties which at the time of enactment of said ordinance are not within one hundred (100) feet of existing water or sewer mains, must abandon the existing well and/or sewer/septic systems, make application for connection to the city sewer and water system, and take substantial steps to connect to the city systems within six months of such time as city brings water and sewer service to within one hundred (100) feet of such parcel.
  2. The exercise of the exemption set forth in subsection (A)(1) of this section does not relieve any property owner from the obligation to pay connection and other charges set forth in this code nor waive any other applicable provision or code section herein.
- B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
- D. Standby fire protection lines are exempt from all portions of the system development charge.
- E. The city council may by resolution exempt any project or development of a public entity from the imposition of all or a portion of applicable systems development charges, if the project or development both (1) includes construction or improvements not eligible for SDC credits for the exemption requested, and (2) confers a substantial benefit on the city as a whole and not merely a portion of the city. Examples include public parks, public recreation facilities and public streets. Any exemption made pursuant to this section is entirely discretionary, and is intended to permit the city to help other public entities to construct projects or developments in the city that otherwise might not be completed due to the cost of systems development charges. Any decision made pursuant to this section shall be a legislative decision of the city council.

(Ord. 2007-3 § 9; prior code § 2.645)

(Ord. No. 2009-005, § 1, 1-11-2010)

### **3.16.110 Installment payment.**

- A. Park systems development charges and charges less than five hundred dollars (\$500.00) may not be paid in installments. All other systems development charges of five hundred dollars (\$500.00) or more may be paid in two semi-annual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.

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- B. The city recorder shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for correction of computational errors.
- C. An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.
- D. The city recorder shall determine the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.
- E. The city recorder shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223. All system development charges shall be due and payable upon a change of ownership from an owner who elects to pay system development charges by installment under this chapter to an owner who acquires a fee interest in the parcel subject to the system development charge.

(Ord. 1999-7 § 2; prior code § 2.650)

### **3.16.120 Credits.**

- A. A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existing and services were established on or after the effective date of the ordinance codified in this chapter. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
- B. A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged 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.
- C. When a capital improvement for which a credit is applied is a part or a phase of a larger project, such as a subdivision or partition, credits against a systems development charge may be assigned to other parts of the larger project, provided they apply only to that property subject to the original condition for development approval upon which the credit is based. Credits shall not otherwise be transferable from one development to another.
- D. Credit against park systems development charges for dedication of qualified park land will be considered in accordance with Sections 16.116.010(M) and 16.116.020. For all other system development charges, a credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall apply only to the improvement fee charged for the type of improvement being constructed and shall not exceed the amount of the improvement fee, regardless of the cost of the capital improvement.

(Ord. 1999-7 § 3; prior code § 2.655)

**3.16.130 Segregation and use of revenue.**

- A. All funds derived from a particular type of system development charge are to be segregated from other system development charges, and are to be segregated from all other funds of the city by accepted accounting practices. System development charges generating both reimbursement-fee revenues and improvement-fee revenues shall be collected and shall be held separately in accounts designated to receive reimbursement-fee and improvement-fee revenues for each facility system. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 3.16.060, and in accordance with the provisions of ORS Chapter 223.
- B. The city recorder shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

(Prior code § 2.660)

**3.16.140 Appeal procedure.**

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city recorder describing with particularity the decision of the city manager and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the city manager under this chapter must be filed within ten (10) days of the date of the decision.
- C. After providing notice to the appellant, the council shall determine whether the city manager's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

(Prior code § 2.665)

**3.16.150 Prohibited connection.**

No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid.

(Prior code § 2.670)

**3.16.160 Construction.**

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter.

(Prior code § 2.680)

**3.16.180 Penalty.**

Violation of this chapter is punishable as provided in Section 1.12.010 of this code.

(Ord. 2000-18 § 3: prior code § 2.675)

**Chapter 3.20 FRANCHISE AGREEMENTS**

**Sections:**

Article I. - Franchise Agreement Required for Use of Rights-of-Way

Article II. - Permit Requirements

Article III. - Commencement of Work in the Right-of-Way

Article IV. - Bonding and Insurance

Article V. - City Liability and Indemnity

Article VI. - Additional Franchise Terms

**Article I. Franchise Agreement Required for Use of Rights-of-Way**

[3.20.010 General.](#)

[3.20.020 Definitions.](#)

**3.20.010 General.**

The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the city charter and state law, whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

- A. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.
- B. No person shall commence or continue with the construction, installation, operation of garbage hauling and related recycling operations, telecommunication facilities, cable television facilities and power service within a public right-of-way within the city of Estacada except as provided in this chapter and in compliance with all applicable codes, rules and regulations now in effect or adopted in the future by the city. All facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

(Ord. 2000-33 § 1 (part): prior code § 1.900)

### **3.20.020 Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. The words "shall" and "will" are mandatory and "may" is permissive. If not defined there, the words shall be given their common and ordinary meaning.

"City" means the city of Estacada, a municipal corporation, and individuals authorized to act on the city's behalf.

"Construction" means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

"Days" means calendar days unless otherwise specified.

"Emergency" shall have the meaning provided for in ORS 401.025.

"Franchise" means an agreement between the city and a grantee which grants a privilege to use public right-of-way and utility easements within the city for a dedicated purpose and specific compensation.

"Grantee" means the person to which the franchise is granted by the city.

"Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

"Public rights-of-way" means and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use such areas. "Public rights-of-way" shall also include utility easements as defined below.

"State" means the state of Oregon.

"Utility easement" means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

(Ord. 2000-33 § 1 (part): prior code § 1.910)

## **Article II. Permit Requirements**

[3.20.030 Construction permits.](#)

[3.20.040 Permit applications.](#)

[3.20.050 Applicant verification.](#)

[3.20.060 Construction permit fee.](#)

[3.20.070 Issuance of permit.](#)

### **3.20.030 Construction permits.**

No person shall construct or install any facilities within a public right-of-way without first obtaining a construction permit and paying the construction permit fee provided by this chapter and by this code. No permit shall be issued for the construction or installation of any facilities within the public right-of-way unless and until such person has first applied for and been granted a franchise pursuant to this chapter.

(Ord. 2000-33 § 1 (part): prior code § 1.920)

**3.20.040 Permit applications.**

Applications for permits to construct facilities within the public right-of-way shall be submitted on forms to be provided by the city and shall be accompanied by drawings, plans and specifications. The drawings, plans and specifications must:

- A. Provide sufficient detail to demonstrate that the facilities will be constructed in accordance with all applicable codes, rules and regulations;
- B. Demonstrate that the facilities will be constructed in accordance with the franchise agreement;
- C. Provide the location and route of all existing facilities and the location and route of all new facilities to be installed underground, on or above a public right-of-way including the line and grade proposed for the burial of all points along the route that are within the public right-of-way. Existing facilities shall be distinguished from new construction;
- D. Provide a cross-section showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way;
- E. Provide a summary of -the construction methods to be employed in performing the work and the means to be used to protect existing structures, fixtures, facilities which are within or adjacent to the public right-of-way including a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate; and
- F. Provide a written construction schedule which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.

(Ord. 2000-33 § 1 (part): prior code § 1.921)

**3.20.050 Applicant verification.**

All permit applications shall be accompanied by the verification of a registered professional engineer or other qualified and duly authorized representative of the applicant certifying that the drawings, plans and specifications submitted with the application comply with all applicable technical codes, rules and regulations.

(Ord. 2000-33 § 1 (part): prior code § 1.922)

**3.20.060 Construction permit fee.**

Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit the applicant shall pay a permit fee in an amount consistent with this chapter or as otherwise determined by resolution of the city council in an amount sufficient to defray the costs of city administration of the requirements of this section.

(Ord. 2000-33 § 1 (part): prior code § 1.923)

**3.20.070 Issuance of permit.**

If satisfied that the applications, plans, and documents submitted comply with all requirements of this code, the franchise agreement and any and all applicable provisions of the city code or other laws, the city shall issue a permit authorizing construction of the facilities subject to further conditions, restrictions

or regulations affecting the time, place, and manner of performing the work as the city may deem necessary or appropriate.

(Ord. 2000-33 § 1 (part): prior code § 1.924)

### **Article III. Commencement of Work in the Right-of-Way**

[3.20.080 Notice of construction.](#)

[3.20.090 Compliance with permit.](#)

[3.20.100 Flagging required.](#)

[3.20.110 Noncomplying work.](#)

[3.20.120 Completion of construction.](#)

[3.20.130 As-built drawings.](#)

[3.20.140 Restoration of public rights-of-way and city property.](#)

#### **3.20.080 Notice of construction.**

Except in the case of an emergency, the applicant shall notify the city not less than two working days in advance of any excavation or construction in the public rights-of-way.

(Ord. 2000-33 § 1 (part): prior code § 1.930)

#### **3.20.090 Compliance with permit.**

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city shall be provided access to the work site and such further information as it may require to ensure compliance with such requirements.

(Ord. 2000-33 § 1 (part): prior code § 1.931)

#### **3.20.100 Flagging required.**

A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures that are required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

(Ord. 2000-33 § 1 (part): prior code § 1.932)

#### **3.20.110 Noncomplying work.**

Subject to the notice requirements in 3.20.140(B), all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee.

(Ord. 2000-33 § 1 (part): prior code § 1.933)

### **3.20.120 Completion of construction.**

The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within city rights-of-way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule and approved by the appropriate city official.

(Ord. 2000-33 § 1 (part): prior code § 1.934)

### **3.20.130 As-built drawings.**

If requested by the city, the permittee shall furnish the city with two complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all facilities constructed pursuant to the permit.

These plans shall be submitted to the city engineer or designee within sixty (60) days after completion of construction, in a format mutually acceptable to the permittee and the city.

(Ord. 2000-33 § 1 (part): prior code § 1.935)

### **3.20.140 Restoration of public rights-of-way and city property.**

When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the city and as determined by the city engineer or other designated representative of the city.

- A. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the city.
- B. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after such notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee.

(Ord. 2000-33 § 1 (part): prior code § 1.936)

## **Article IV. Bonding and Insurance**

[3.20.150 Franchise surety.](#)

[3.20.160 Performance and completion bond.](#)

[3.20.170 Grantee insurance.](#)

### **3.20.150 Franchise surety.**

Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations, or permits of the city. This obligation is in addition to the performance surety required for construction of facilities.

(Ord. 2000-33 § 1 (part): prior code § 1.940)

### **3.20.160 Performance and completion bond.**

Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the city equal to at least one hundred (100) percent of the estimated cost of constructing permittee's facilities within the public rights-of-way of the city, shall be provided before construction is commenced.

- A. The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.
- B. The surety shall guarantee, to the satisfaction of the city:
  - 1. Timely completion of construction;
  - 2. Construction in compliance with applicable plans, permits, technical codes and standards;
  - 3. Proper location of the facilities as specified by the city;
  - 4. Restoration of the public rights-of-way and other property affected by the construction; and
  - 5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(Ord. 2000-33 § 1 (part): prior code § 1.941)

### **3.20.170 Grantee insurance.**

Unless otherwise provided in franchise agreement, each grantee shall, as condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

- A. Comprehensive general liability insurance with limits not less than:
  - 1. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
  - 2. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
  - 3. Three million dollars (\$3,000,000.00) for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.

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- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
- E. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or it engaged in the removal of its facilities or services. Each such insurance policy shall contain the following endorsement:

It is hereby understood that, at least ninety (90) days before this policy is canceled or an intention not to renew this policy is stated, the grantee and the insurer must provide written notice addressed to the City of such intent to cancel or not to renew.
- F. Within sixty (60) days after receipt by the city of such notice, and in no event later than thirty days prior to said cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section.
- G. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

(Ord. 2000-33 § 1 (part): prior code § 1.942)

### **Article V. City Liability and Indemnity**

[3.20.180 Damage to grantee's facilities.](#)

[3.20.190 General indemnification.](#)

#### **3.20.180 Damage to grantee's facilities.**

Unless directly and proximately caused by wilful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any facility within the public rights-of-way of the city as a result of or in connection with any public works, public improvements, constructions, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.

(Ord. 2000-33 § 1 (part): prior code § 1.950)

#### **3.20.190 General indemnification.**

Each franchise agreement shall include, to the extent permitted by law, grantee's expressed undertaking to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its facilities or services, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement made or entered into pursuant to this chapter.

(Ord. 2000-33 § 1 (part): prior code § 1.951)

**Article VI. Additional Franchise Terms**

[3.20.200 Duty to provide information.](#)

[3.20.210 Governing law.](#)

[3.20.220 Written agreement.](#)

[3.20.230 Nonexclusive grant.](#)

[3.20.240 Compliance with laws.](#)

[3.20.250 Application to existing ordinance and agreements.](#)

[3.20.260 Penalties.](#)

**3.20.200 Duty to provide information.**

Within ten (10) business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate that the grantee has complied with all requirements of this chapter. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way shall be made available for inspection by the city at reasonable times and intervals.

(Ord. 2000-33 § 1 (part): prior code § 1.960)

**3.20.210 Governing law.**

Any franchise granted under this chapter is subject to the provisions of the Constitution and laws of the United States, and the state of Oregon and the ordinances and Charter of the city.

(Ord. 2000-33 § 1 (part): prior code § 1.961)

**3.20.220 Written agreement.**

No franchise shall be granted hereunder unless the agreement is in writing.

(Ord. 2000-33 § 1 (part): prior code § 1.962)

**3.20.230 Nonexclusive grant.**

Unless specifically provided in the franchise agreement, no franchise granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of services or any other purposes.

(Ord. 2000-33 § 1 (part): prior code § 1.963)

### **3.20.240 Compliance with laws.**

Any grantee under this chapter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term of any franchise granted under this chapter, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

(Ord. 2000-33 § 1 (part): prior code § 1.965)

### **3.20.250 Application to existing ordinance and agreements.**

To the extent that this chapter is not in conflict with and can be implemented with existing code and franchise agreements, this chapter shall apply to all existing ordinances and franchise agreements for use of the public rights-of-way for telecommunications.

(Ord. 2000-33 § 1 (part): prior code § 1.966)

### **3.20.260 Penalties.**

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be subject to the general penalty provisions of this code. Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter.

(Ord. 2000-33 § 1 (part): prior code § 1.970)

## **Chapter 3.24 PERCENT FOR ART PROGRAM**

### **Sections:**

[3.24.010 Purpose.](#)

[3.24.020 Definitions.](#)

[3.24.030 Dedication.](#)

[3.24.040 Phased projects.](#)

[3.24.050 Ownership.](#)

[3.24.060 Waivers permitted.](#)

### **3.24.010 Purpose.**

The city of Estacada desires to expand the experience of its citizenry through public art of the highest quality in concept and execution. Public art contributes directly to the quality of life in the city of Estacada, because citizens view and interact with it daily in public spaces. Public art instills concern for beauty and good design in the public and private sectors by setting high aesthetic standards. Public art reflects and communicates the history, character and values of the community and thereby creates a sense of place. The city therefore declares its policy that each major city construction project which

involves the construction or alteration of certain city facilities shall have an appropriate display of works of art integrated into the project by establishing a percent for art program.

(Ord. 2004-1 § 1 (part))

### **3.24.020 Definitions.**

As used in this chapter:

"Budgeted construction cost" means the original budgeted construction cost, excluding engineering costs, contingencies and administrative costs, costs for fees and permits, and indirect costs, such as interest during construction, advertising, legal fees and the like.

"City facility" means all city buildings and parks, but does not include the construction of service facilities not normally visited by the public, such as maintenance sheds, storage buildings, bridges, and the like, or improvement projects and facilities such as streets, sewer, water or similar facilities or projects.

"Commission" means the Estacada Area Arts Commission.

"Construction" or "alteration" means construction, rehabilitation, renovation, remodeling or improvement.

"Major city construction project" means any capital project in an amount over twenty-five thousand dollars (\$25,000.00) paid for wholly or in part by the city of Estacada to purchase, construct, rehabilitate or remodel any building, decorative or commemorative structure, park, parking facility or any portion thereof within the limits of the city of Estacada. "Project" does not include street, pathway or utility construction, emergency work, minor alterations, ordinary repair or maintenance necessary to preserve a facility.

"Participating department" means the department that is subject to this chapter by its sponsorship of a city project.

"Percent for art" means the program established by the ordinance codified in this chapter to set aside a percentage of the total cost of city projects for public art.

"Selection committee" means the committee pursuant to guidelines adopted by the city council, and responsible for reviewing proposed public art and making recommendations on the selection of public art.

"Works of art" means all forms of original creations of visual art including, but not limited to, the following:

1. Painting of all media, including both portable and permanently fixed works, such as murals;
2. Sculpture, which may be in the round, bas-relief, high-relief, mobile, fountain, kinetic, electronic and others, in any material or combination of materials;
3. Other visual media including, but not limited to, prints, drawings, stained glass, calligraphy, glass works, mosaics, photography, film, clay, fiber or textiles, wood, metals, plastics or other materials or combination of materials, or crafts or artifacts;
4. Works of a wide range of materials, disciplines and media that are of specific duration, including performance events, and that are documented for public accessibility after the life of the piece has ended;
5. Art works that possess functional as well as aesthetic qualities.

(Ord. 2004-1 § 1 (part))

(Ord. No. 2007-1, § 1, 1-22-2007)

### **3.24.030 Dedication.**

One percent of the budgeted construction cost of a major city construction project shall be set aside for the acquisition of works of art: these works of art shall be displayed in, upon, adjacent to or in close proximity to the city facility that is the subject of the project, except if it would be inappropriate to display the works of art in that location, in which case, the one percent shall be used for the acquisition of works of art for display in, upon, adjacent to or in close proximity to other city facilities.

(Ord. 2004-1 § 1 (part))

(Ord. No. 2007-1, § 2, 1-22-2007)

### **3.24.040 Phased projects.**

As a general rule, where a city project will be constructed in phases, the one percent dedication shall be applied to the estimated total cost of each phase of the project at the time that funds for the phase are appropriated and encumbered. Nothing in this section prevents the council from deciding to set aside all or part of the entire dedication from the funds of a particular phase, however, as the council deems appropriate. In determining when to set aside the funds for a phased project, the city shall encourage an overall public art plan for phased work to ensure that art is not located on a piecemeal basis.

(Ord. 2004-1 § 1 (part))

### **3.24.050 Ownership.**

All public art acquired pursuant to the ordinance codified in this chapter shall be acquired in the name of the city of Estacada, and title shall vest in the city of Estacada.

(Ord. 2004-1 § 1 (part))

### **3.24.060 Waivers permitted.**

The city council may waive the one percent for art requirement.

(Ord. 2004-1 § 1 (part))

## **Chapter 3.30 MOTOR VEHICLE FUEL TAX**

### **Sections:**

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### **3.30.010 Reserved.**

### **3.30.020 Definitions.**

As used in this chapter, unless the context requires otherwise:

"Broker" means and includes every person other than a dealer engaged in business as a broker, jobber or wholesale merchant dealing in motor vehicle fuel.

"Bulk transfer" means any change in ownership of motor vehicle fuel contained in a terminal storage facility or any physical movement of motor vehicle fuel between terminal storage facilities by pipeline or marine transport.

"city" means city of Estacada and any person, agency or other entity authorized by the city to act as its agent related to administration of the chapter or collection of the motor vehicle fuel tax.

"Dealer" means any person who:

1. Imports or causes to be imported motor vehicle fuels for sale, use or distribution in, and after the same reaches the city, but "dealer" does not include any person who imports into this city motor vehicle fuel in quantities of five hundred (500) gallons or less purchased from a supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who assumes liability for the payment of the applicable license tax to this city; or

## Title 3 REVENUE AND FINANCE

2. Produces, refines, manufactures or compounds motor vehicle fuels in the city of Estacada for use, distribution or sale in this city; or
3. Acquires in this city for sale, use or distribution in this city motor vehicle fuels with respect to which there has been no license tax previously incurred; or
4. Acquires title to or possession of motor vehicle fuels in this city and exports the product out of this city.

"Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

"Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

"Motor vehicle fuel" means and includes gasoline, diesel, and any other inflammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the city, is for purposes other than the propulsion of motor vehicles upon the highways of this city.

"Motor vehicle fuel handler" means any person who acquires or handles motor vehicle fuel within the city through a storage tank facility with capacity that exceeds five hundred (500) gallons of motor vehicle fuel.

"Person" includes every natural person, association, firm, partnership, corporation or the United States but does not include the city.

"Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.030 Tax imposed.**

A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of the city.

- A. A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this city from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel handlers permit in this city. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this city and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.
- B. A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this city, shall pay the tax imposed by this chapter to the city, upon the sale, use or distribution of the motor vehicle fuel.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.040 Amount and payment.**

- A. Subject to divisions B. and C. of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the city, in the sale, use or distribution of motor vehicle fuel, shall:

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1. Not later than the twenty-fifth day of the month following each calendar quarter, render a statement to the city or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.
  2. Pay a motor vehicle fuel tax computed on the basis of three and zero-tenths cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this chapter.
- B. In lieu of claiming refund of the tax as provided in Section 3.30.200, or of any prior erroneous payment of motor vehicle fuel tax made to the city by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the quarterly statement and payment of tax.
- C. The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the state of Oregon, and additionally shall not be imposed upon motor fuel which is taxed by the state of Oregon pursuant to a formula other than by the gallon.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.050 Permit requirements.**

No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.060 Permit applications and issuance.**

- A. Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this city, or whom is engaged in business on or after the date of September 1, 2009 shall make an application within thirty (30) days to the city or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.
- B. Applications for the permit must be made on forms prescribed, prepared and furnished by the city or its duly authorized agent.
- C. The applications shall be accompanied by a duly acknowledged certificate containing:
1. The business name under which the dealer or fuel-handler is transacting business.
  2. The address of the place of business and location of distributing stations in the city and in areas adjacent to the city limits in the city.
  3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the city, shall issue to the dealer or fuel-handler a permit in such form as the city or its duly authorized agent may prescribe to transact business in the city. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.
- E. The city recorder's office shall keep on file a copy of all applications and/or permits.
- F. No fee(s) shall be charged by the city for securing said permit as described herein.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.070 Failure to secure permit.**

- A. If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.30.060, the motor vehicle fuel tax shall immediately be due and payable by the dealer on account of all motor vehicle fuel so sold, distributed or used.
- B. The city shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of two hundred (200) percent of the tax, and shall make its certificate of such assessment and penalty, determined by city manager or the city's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate of assessment and penalty is prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty therein stated.
- C. Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.30.060, shall be assessed a penalty of two hundred fifty dollars (\$250.00) unless modified by subsection 3.30.270(A), determined by the city manager or the city's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the city in the amount of the penalty therein stated.
- D. Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.30.110 with reference to delinquency in payment of the tax or by court action.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.080 Revocation of permit.**

The city may revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this chapter. The city shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within ten (10) days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.090 Cancellation of permit.**

- A. The city may, upon written request of a dealer or fuel-handler, cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective thirty (30) days from the date of receipt of the written request.
- B. If the city ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the city may cancel the permit of such dealer or fuel-handler upon investigation after thirty (30) days' notice has been mailed to the last known address of the dealer or fuel-handler.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.100 Remedies cumulative.**

Except as otherwise provided in Sections 3.30.110 and 3.30.130, the remedies provided in Sections 3.30.070, 3.30.080, and 3.30.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.110 Payment of tax and delinquency.**

- A. The motor vehicle fuel tax imposed by Sections 3.30.030 and 3.30.040 shall be paid to the city on or before the twenty-fifth day of the month following the calendar quarter. Upon written request, the city shall provide a receipt to the dealer or fuel-handler for the tax paid.
- B. Except as provided in division D., to any motor vehicle fuel tax not paid as required by division A., there shall be added a penalty of one percent of such motor vehicle fuel tax.
- C. Except as provided in division D. of this section, if the tax and penalty required by division B. of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten (10) percent shall be paid in addition to the penalty provided for in division B.
- D. If the city, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by divisions B. and C. of this section may be waived by the city. Penalties imposed by this section shall not apply when the penalty provided in Section 3.30.070 for failure to secure the required permit has been assessed and paid.
- E. If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this chapter, the amount thereof shall be collected from such person for the use of the city. The city may commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.
- F. In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this chapter if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.
- G. No dealer who collects from any person the tax provided for herein shall knowingly and willfully fail to report and pay the same to the city, as required herein.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.120 Quarterly statement of dealer and fuel-handler.**

Unless modified by subsection 3.30.270(B), every dealer and fuel-handler in motor vehicle fuel shall render to the city, on or before the twenty-fifth day of the month following the calendar quarter, on forms prescribed, prepared and furnished by the city, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar quarter. The statement shall be signed by the permit holder. All statements filed with the city as required in this section are public records.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.130 Failure to file quarterly statement.**

If any dealer or fuel-handler fails to file the report required by Section 3.30.120, the city, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The city shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of ten (10) percent for failure to report. Any dealer or fuel-handlers who fails to file a quarterly statement of motor vehicle fuel shall be assessed a penalty of fifty dollars (\$50.00) for each missing report. The penalty shall be cumulative to other penalties provided in this chapter. In any suit brought to enforce the rights of the city under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler that the same are due and unpaid to the city is prima facie evidence of the facts as shown.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.140 Billing purchasers.**

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the city the different products shipped there under and shall be serially numbered except where other sales invoice controls acceptable to the city are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.150 Failure to provide invoice or delivery tag.**

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.160 Transporting motor vehicle fuel in bulk.**

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the city with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall, at the request of any officer authorized by the city to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.170 Exemption of export fuel.**

- A. The motor vehicle fuel tax imposed by Sections 3.30.030 and 3.30.040 shall not be imposed on motor vehicle fuel:
  - 1. Exported from the city by a dealer; or

## Title 3 REVENUE AND FINANCE

2. Sold by a dealer in individual quantities of five hundred (500) gallons or less for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the city in such detail as may be required.
- B. In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the city an export certificate in such form as shall be prescribed, prepared and furnished by the city, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the city, and giving such details with reference to such shipment as may be required. The city may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The city may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.
  - C. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.
  - D. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the city motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the city and the dealer from whom the motor vehicle fuel was originally purchased of his act.
  - E. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the city for sale or use so as to avoid any of the fees imposed herein.
  - F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred (500) gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the city. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.180 Sales to armed forces exempted.**

The motor vehicle fuel tax imposed by Sections 3.30.030 and 3.30.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the city, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

(Ord. No. 2009-004, § 1, 9-14-2009)

### **3.30.190 Fuel in vehicles coming into city not taxed.**

Any person coming into the city in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without paying the tax provided in Sections 3.30.030 and 3.30.040, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the city is removed from the fuel tank of

the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the city shall be subject to all provisions herein applying to dealers.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.200 Refunds.**

Refunds will be made pursuant to ORS 319.280 to 319.320.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.210 Examination and investigations.**

The city, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this city, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examinations or investigations disclose that any reports of dealers or other persons filed with the city pursuant to the requirements herein have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the city may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors by its examinations or investigations. In addition to any other fee or penalty imposed by the city under this chapter, if an examination of a dealer's records result in any fines or penalties for failure to pay the tax imposed herein, or if underpayment in excess of two hundred fifty dollars (\$250.00) is found due and owing city, the dealer shall further be assessed the costs of the examination of the dealer's records, including the city's attorney fees whether suit is initiated or not.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.220 Limitation on credit for refund or overpayment and on assessment of additional tax.**

- A. Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the city or to its authorized agent.
- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three years from the date upon which such additional taxes become due.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.230 Examining books and accounts of carrier of motor vehicle fuel.**

The city or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the city for the purpose of enforcing the provisions of this chapter by checking shipments or use of motor vehicle fuel, or detecting diversions thereof or evasion of taxes.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.240 Records to be kept by dealers and fuel handlers.**

Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the city of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the city or its authorized officers or agents.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.250 Records to be kept three years.**

Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the city by such dealer or fuel-handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the city. In the event such records are not kept within the state of Oregon, the dealer shall reimburse the city or its duly authorized agents for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed by Section 3.30.030.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.260 Use of tax revenues.**

- A. The city manager or designee shall be responsible for the disposition of the revenue from the tax imposed by this chapter in the manner provided by this section.
- B. For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this chapter remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed ten and one-half (10.5) percent for the first year, and ten (10) percent thereafter, of annual tax revenues.
- C. The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, and maintenance of public highways, roads and streets within the city.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.270 Administration.**

The city manager or his designate is responsible for administering this chapter. In addition, the city manager may enter into an agreement with the motor vehicle division of the department of transportation as an authorized agent for the implementation of certain sections of this chapter. If the motor vehicles division is chosen as an authorized agent of the city, then the modifications outlined below shall apply:

- A. The fuel handler's penalty imposed under subsection 3.30.070(C) shall be reduced to one hundred dollars (\$100.00). And if the motor vehicles division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.30.070 and this section may be waived.
- B. The fuel handler's quarterly reporting requirements of Sections 3.30.120 and 3.30.130 shall be submitted to the motor vehicles division on a schedule and form as approved by said agency.

(Ord. No. 2009-004, § 1, 9-14-2009)

**3.30.280 Severability.**

If any portion of this chapter is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter.

(Ord. No. 2009-004, § 1, 9-14-2009)