

## Chapter 4

### UTILITIES

#### SEWER REGULATIONS

**4.000 Definitions.** The following words and phrases when used in this section, 4.000 to 4.060, shall have the meanings given to them in this section:

BOD (denoting biochemical oxygen demand). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain. That part of the lower horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewers, beginning five feet (1.5 meters) outside the inner face of the building walls.

Building sewer. The extension from the building drain to the public sewer or other place of disposal.

Combined sewer. A sewer receiving both surface runoff and sewage.

Garbage. Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Industrial wastes.

(1) The liquid wastes from any nongovernmental user of publicly owned treatment works identified in the "Standard Industrial Classification Manual", 1972, Office of Management and Budget, as amended and supplemented under the following divisions:

- (a) Division A--Agriculture, Forestry, and Fishing;
- (b) Division B--Mining;
- (c) Division. D-Manufacturing;

(d) Division E--Transportation, Communications, Electric, Gas, and Sanitary Services;

(e) Division I--Services.

(2) A user in the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

Natural outlet. Any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

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

Properly shredded garbage. The wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Public sewer. A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

Sanitary sewer. A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

Sewage. A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

Sewage treatment plant. Any arrangement of devices and structures used for treating sewage.

Sewage works. All facilities for collecting, pumping, treating, and disposing of sewage.

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**Sewer.** A pipe or conduit for carrying sewage.

**Slug.** Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than 5 times the average 24-hour concentration or flows during normal operation.

**Storm drain or storm sewer.** A sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**Suspended solids.** Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

**Watercourse.** A channel in which a flow of water occurs, either continuously or intermittently.

**4.003 Application.** The city administrator shall issue a uniform application for water and sewer service and require the following specific information from the applicant: name, date of birth, Oregon driver's license number, social security number, service address, mailing address, property owner, type of service, number of people in household, number of bathrooms being serviced and what kind of occupancy being served. The city administrator shall also require the applicant to abide by all rules and regulations of the city, that sewer and water shall be paid at the same time, and that the applicant becomes a personal surety for the payment of monthly fees. The applicant shall also be advised that a theft of services charge may be filed for failure to pay for public services received.

[Amended by Ord. 565 on Jan. 8, 2004]

**4.004 Denial of Service.** The City Administrator may deny water and sewer service for the following reasons:

- (a) Information on the application is incomplete, false or inaccurate;
- (b) The applicant has an unpaid

balance from former water or sewer service at the same or some other location in the city of Lafayette; or

(c) A lien for unpaid water or sewer user fees is currently recorded against the property for which service is requested.

### **4.005 Use of Public Sewers Required--Subsurface Disposal Systems.**

(1) All premises on which there is located any building, structure, mobile home, motor home, vacation trailer, or any other facility containing sinks, water closets, bathtubs, showers, or any device for receiving sewage and/or waste water shall be connected to the city sanitary sewer system in all cases where such sewers are adjacent to, or within 200 feet of, such premises. Connection to the sanitary sewer shall not be required of any motor home, vacation trailer, or camper which is parked on the premises for storage only. All existing premises located adjacent to or within 200 feet of a city sanitary sewer at the time of enactment of the ordinance codified in sections 4.000 to 4.060 shall connect to said sanitary sewer within 90 days of receiving written notice from the city administrator to connect to said sanitary sewer.

(2) No cesspools, septic tanks, subsurface disposal field, leaching bed, or wet wall shall be installed or utilized for the purpose of disposal of sewage or waste water from any premises which are adjacent to, or within 200 feet of, a city sanitary sewer.

(3) (a) Properly designed and approved subsurface disposal systems may be approved for installation where premises to be served are not adjacent to or within 200 feet of a city sanitary sewer.

(b) Complete detailed plans and specifications shall be submitted with each application for a permit for a subsurface disposal system. These plans and speci-

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cations shall include, as a minimum, the following information:

i. Topographic map of the lot or parcel showing existing elevations, drainage channels and/or drainage patterns, together with a detailed, scaled, plot plan showing all existing or proposed and detailed layout of the proposed subsurface disposal system;

ii. A valid permit, issued by the Oregon State Department of Environmental Quality, or the county public works department.

(4) All permits issued for installation of subsurface disposal systems subsequent to the enactment of the ordinance codified in sections 4.000 to 4.060 shall be granted under the express condition and agreement, that, within 90 days following the installation of sanitary sewers adjacent to or within 200 feet of the premises, the use of such subsurface disposal system shall be discontinued and the premises connected to the sanitary sewer. Abandonment of the subsurface disposal systems shall be in accordance with the provisions of section 4.060 of this code.

(5) (a) No surface water including drainage from roof drains, area or driveway drains, swimming pools, catch basins or storm sewers, springs, or any other source other than normal plumbing devices, shall be connected to or allowed to enter any sanitary sewer.

(b) Basement drains may be connected to sanitary sewers provided

there is no excess water in such basement and such drain shall receive only that water which may seep into a concrete lined basement or such water as may be used for cleaning such basement.

(6) (a) No person, firm, or corporation shall install, construct, or lay any sanitary sewer pipe connecting to the city sanitary

sewer system, or install, construct, or utilize any subsurface disposal system, without first making proper application, paying the required fee, and receiving a duly authorized permit from the city.

(b) Issuance of such permit and all installations authorized thereby shall be in full conformance with all requirements of sections 4.000 to 4.060 and all other applicable ordinances, rules, and regulations of the city, and rules and regulations of the Oregon State Plumbing Code. No portion may be covered prior to approval by the city.

(7) No matter, material, or substance other than sewage, shall be permitted to enter the sanitary sewer system, and no matter, material, or substance of any kind shall be deposited in any manhole or cleanout except such cleaning or flushing materials or substances as may be authorized or directed by the city administrator. No commercial, manufacturing, or processing wastes and no septic tank or cesspool contents or effluent shall be placed in any sanitary sewer system, unless a permit therefor shall have been first obtained from the city. Such permit will be issued only under conditions, and for such materials, as may be designated by the city.

(8) Any existing private sewer line or house service line connecting to any city sanitary sewer and which is deemed to be a hazard to public health due improper construction, deterioration, lack of repair and maintenance, or from any other cause shall, upon determination of the existence of such hazard by the city administrator, be repaired as directed by the city administrator. Such repairs shall be completed within 30 days of the date of delivery to the owner or occupant of the property of written notice to make the repairs.

(9) Any subsurface disposal system which is found to be malfunctioning as determined by the county soil scientist, D.E.Q., or the city administrator, shall be repaired by the owner or occupant of the property within 30 days

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of delivery of written notice to make such repairs. All premises which are determined to have a malfunctioning subsurface disposal system, and are adjacent to, or within 200 feet of, a city sanitary sewer, shall be connected to said sanitary sewer within 90 days of receiving written notice from the city administrator to connect to said sanitary sewer, and the subsurface disposal system shall be abandoned in accordance with the provisions of section 4.060 of this code.

(10) (a) Any person, firm or corporation desiring to obtain a permit to connect to the sanitary sewer system or to install a subsurface disposal system shall make written application therefor to the city.

(b) Such application shall be accompanied by a connection fee and in an amount conforming to the connection fee required by the city at the time of the application for a sewer connection.

### **4.006 Sewer Connection Fees and Charges.**

The charges and fees for sewer connections shall be established by resolution of the Lafayette city council. The resolution in effect on the effective date of this section shall remain in effect until amended by the city council. *[Added by Ord 531 on Aug 24, 2000]*

### **4.007 Sewer Rates.**

(1) Monthly Rates. The monthly rates for users of the City of Lafayette sanitary sewer system shall be established by resolution of the Lafayette city council. The resolution in effect on the effective date of this section shall remain in effect until amended by the city council.

(2) Rate for Industrial Waste. A special rate may be charged to anyone disposing of industrial or commercial waste that requires pretreatment or that has a significant impact on the sanitary sewer system or treatment plant. Such high impact users shall pay at the rate established by resolution of the city council. Any industrial or high impact user must obtain a permit from the city engineer before hooking up to the

city's sanitary sewer system. The charge for the permit will be established by council resolution. Any industrial or high impact user may be required to pay a refundable cash deposit in an amount established by resolution of the city council before the permit is granted. To acquire the permit, the applicant shall provide any information required by the city engineer. *[Added by Ord 531 on Aug 24, 2000]*

### **4.010 Discontinuance of Sewer Service by Customer.**

(1) Whenever any water customer wishes to have their water service discontinued, and there is more than 15 days left in the billing cycle, the sewer rate will be reduced by 50% on the final bill.

*[Added by Ord. 565 on Jan. 8, 2004]*

### **4.015 Responsibility for Sewer Charges, Delinquent Payments, Water Shut Off for Nonpayment, Security Deposit Required and Charge for Nonsufficient Funds.**

(1) The customer shall be responsible for all charges for sewer service.

(2) Whenever any sewer charge is not paid when due, the water department may discontinue service by shutting off water service for nonpayment. Water shall not be returned to service until the customer pays their account balance in full and a \$30 reconnect fee is paid. Upon receipt of these payments at the city hall during regular office hours, the customer's water service will be restored by the city as soon as reasonably possible. Written notice for discontinuing water service for nonpayment of charges shall be given to the customer by regular mail at least ten days in advance of the shut off and by posting a notice on the premises 48 hours in advance of the shut off. The notice shall state that if the charges are disputed, the responsible customer may request an informal conference with the city administra-

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tor or his/her designee. Such request must be received no later than two days prior to the scheduled shut off date. *[Amended by Ord 499 on Sep 10, 1998]*

(3) The city may require security (cash) deposits prior to providing, or to continue to provide, sewer service to any customer. The amount of the security deposit may not be less than one, or more than four months minimum

(4) Returned checks will result in a returned check fee of \$25 being added to the account. When a customer's check is returned, the customer shall be notified the same day. The check must be replaced within 3 business days with cash or a money order or the water service will be shut off on the 4<sup>th</sup> day. Once a customer has had two returned checks in any 12 month period, future utility payments must be made in the form of cash or money order for the following 12 month period. After that the customer may again pay by check, but will be returned to a cash-only status for another 12 months if there is one returned check.

(5) All delinquent sewer charges against owner-occupied properties shall be and become a lien against the premises on which the sewer was used and the owner/occupant of any such premises shall be responsible for the payment thereof. The entry of charges on the city's ledgers or other records pertaining to its lien shall be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for services remains unpaid, the lien hereby created may be foreclosed in the manner provided for by ORS 223.610, or in any other manner provided by law or city ordinance. The city shall have the right to refuse water service to the premises until the lien has been paid.

*[Amended by Ord. 565 on Jan. 8, 2004]*

### **4.020 Prohibited Actions.**

(1) It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of said city, any human or animal excrement, garbage, or other objectionable waste.

(2) It is unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of sections 4.000 to 4.060.

(3) Except as herein provided, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

### **4.025 Private Sewage Disposal.**

(1) Where a public sanitary sewer is not available under the provisions of sections 4.000 to 4.060, the building sewer shall be connected to a private sewage disposal system complying with the provisions of sections 4.000 to 4.060.

(2) The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Environmental Quality of the state. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than twenty thousand square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(3) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city.

(4) No statement contained in this section shall be construed to interfere with any additional requirements which may be imposed by the Department of Environmental Quality, county soil scientist, or the city.

**4.030 Building Sewers and Connections.**

(1) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city.

(2) There shall be three classes of building sewer permits: for single-family residential service; for service to multifamily residential buildings; and for commercial establishments. In any case, the owner or his agent shall make application on a special form furnished by the city.

(3) The permit application shall be supplemented by any plans, specifications, or other information considered pertinent by the city. A permit and inspection fee shall be as provided in section 4.005, subsection (10).

(4) All costs and expense incident to the installation and connection of the building sewer shall be borne by the applicant. The applicant shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(5) A separate and independent building sewer shall be provided for every building, except where otherwise approved by the city.

(6) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the city, to meet all requirements of sections 4.000 to 4.060.

(7) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city and state.

(8) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by

an approved means and discharged to the building sewer.

(9) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff of groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(10) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city or state. All such connections shall be made gastight or watertight. Any deviation from the prescribed procedures and materials must be approved by the city before installation.

(11) The applicant for the building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the city.

(12) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work, shall be restored in a manner satisfactory to the city.

**4.040 Application for Building Sewer Permit.**

(1) Application for a building sewer permit to connect to a sanitary sewer line shall be made contemporaneously with the application for a building permit for the building or structure which is to be connected to the sanitary sewer line, except when the building sewer permit is to allow connection to a sanitary sewer line from a building or structure already in existence and already serviced by a subsurface disposal system; and further provided, that such building or structure serviced by a subsurface disposal system is not in the process of being enlarged or altered so as to require the issuance of a building permit.

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(2) Every building sewer permit shall expire by limitation and become null and void if connection is not made to a sanitary sewer line within one hundred twenty days from the date of issuance of such permit. In the event a building sewer permit so expires, before a connection to a sanitary sewer line is made, the building sewer permit fee for connection to a sanitary sewer line which has previously been paid is not refundable.

(3) Before a connection can be made in the event of the expiration of a building sewer permit, a new sewer permit fee shall be obtained to do so, and the sewer permit fee for connection to a sanitary sewer line shall be one-half the amount required for a new building sewer permit fee; provided, that no significant changes have been made or will be made in the original plans and specifications for the structure which will be connected to the sanitary sewer line, and provided further that such suspension or abandonment has not exceeded one year from the original issuance of the building sewer permit.

**4.045 Maintenance and Damage Responsibility for Private Sewer Lines.** The customer shall be responsible for the maintenance of the private sewer line from the public sewer connection to the premises served. The city shall not be liable for any damage accruing from the failure of a private sewer or of fixtures or appurtenances attached thereto.

### **4.050 Use of Public Sewers.**

(1) No person shall discharge or cause to be discharged, any stormwater, surface water, groundwater, roof runoff, subsurface drainage, or unpolluted industrial process waters to any sanitary sewer.

(2) Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the city. Industrial cooling water or unpolluted

process waters may be discharged, on approval of the city, to a storm sewer, or natural outlet.

(3) No person shall discharge or cause to be discharged, any of the following described waters or wastes to any public sewers:

(a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas;

(b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l or CN in the wastes as discharged to the public sewer;

(c) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works;

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(4) No person shall discharge or cause to be discharged, the following described substances, materials, waters, or wastes if it appears likely, in the opinion of the city, that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on

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the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In determining the acceptability of these wastes, the city will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. Substances prohibited are:

(a) Any liquid or vapor having a temperature higher than one 150 degrees Fahrenheit (65 degrees Celsius);

(b) Any water or waste containing fats, gas, grease, or oils, whether emulsified or not, in excess of one hundred mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees and 150 degrees Fahrenheit (0 degrees and 65 degrees Celsius);

(c) Any garbage that has not been property shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the city;

(d) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;

(e) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the city for such materials;

(f) Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations ex-

ceeding limits which may be established by the city as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal, or other public agencies of jurisdiction of such discharge to the receiving waters;

(g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the city in compliance with applicable state or federal regulations;

(h) Any waters or wastes having a pH in excess of 9.5;

(i) Materials which exert or cause:

i. Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate),

ii. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions),

iii. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works,

iv. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein;

(j) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(5) If any waters or wastes are discharged, or are proposed to be discharged to the

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public sewers, which waters contain the substances or possess the characteristics enumerated in this section, and which, in the judgment of the city, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

(a) Reject the wastes;

(b) Require pretreatment to an acceptable condition for discharge to the public sewers;

(c) Require control over the quantities and rates of discharge; and/or

(d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of subsection 4.005(10).

(6) If the city permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the city, and subject to the requirements of all applicable codes, ordinances, and laws.

(7) Grease, oil, and sand interceptors shall be provided when, in the opinion of the city, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the city and shall be located as to be readily and easily accessible for cleaning and inspection.

**4.055 Protection From Damage.** No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any pipe, structure, appurtenance, or equipment which is a part of the sewage works or the water system of the city.

### **4.060 Sealing of Abandoned Septic Tanks Required.**

It is unlawful for any owner of a septic tank to abandon the tank without first completely pumping same out. All septic tank roofs shall be removed and the tank filled with sand and water settled. If the tank is constructed of concrete and in good condition it need not be pumped out and filled with sand. The concrete roof shall be permanently sealed to the satisfaction of the city engineer or his representative. The septic tank shall be inspected and approved by the city engineer or his representative before the tank is covered.

## **SIDE SEWER INSTALLATION**

**4.105 Council Findings.** The council finds that to protect the citizens of Lafayette and to assure adequate construction of sewers and the proper attachment thereof to the city sewer system it is immediately necessary to adopt the provisions of sections 4.105 to 4.110 providing for the licensing of sewer contractors.

### **4.110 Licensing of Sewer Contractors.**

(1) No person other than the owner of the property on which the sewer is being installed or a licensed sewer contractor may install side sewers in the city.

(2) As a prerequisite to entering into contracts with the property owners in the city for the installation of side sewers, septic tanks, cess-pools, septic tank drain fields and of soliciting such work, a contractor shall apply for and with the approval of the city, be licensed as a qualified sewer contractor.

(3) Before being issued a license, a sewer contractor shall submit to the city a statement showing his qualifications for performing such work.

(4) A sewer contractor shall execute and deliver a dual obligee surety bond to be approved by the city in the amount of two thousand

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dollars in favor of the city and the owner of the premises to be served, conditioned that he will perform all sewer work in conformance with the laws of the city and the requirements of other governmental agencies and that he will indemnify and save the city and the owners of the premises harmless against all expenses, damages, costs, and claims arising out of his negligence or unskillfulness in performing such work.

(5) The licensed sewer contractor shall have and keep in full force and effect property damage and liability insurance in the minimum amounts of \$10,000,000 property damage and \$100,000/\$200,000 personal injury while performing any work in the city. A certificate of such insurance shall be filed with the city; said certificate shall indicate that coverage includes sewer excavation, including explosion, collapse, and underground exposure.

(6) The license of any sewer contractor may be revoked upon evidence of his failure to comply with any and all regulations of the city or other governmental agency or for fraud or abuse of owners.

### **PREINDUSTRIAL TREATMENT REGULATIONS**

#### **4.120 Industrial Waste Discharge Permits.**

(1) Except as provided in this code, any significant industrial user proposing to begin or recommence discharging industrial wastes into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommending such discharge. An application for this permit must be filed at least ninety (90) days prior to the anticipated start up date.

(2) Applicable dischargers that are in existence prior to the effective date of this code shall be notified in writing by the superintendent of public works that an Industrial Waste Discharge Permit is required. Such existing discharges shall be allowed to continue discharging

without an Industrial Waste Discharge Permit until a permit is issued or denied, provided the discharger filed a completed application for an Industrial Waste Discharge Permit within ninety (90) days of the receipt of the notice. The discharger shall at all times comply with the city's code and all applicable federal and state pretreatment standards and requirements.

#### **4.122 Permit Application.**

(1) Application for an Industrial Waste Discharge Permit shall be made to the superintendent of public works on forms provided by the department of public works. These forms shall require information pursuant to 40 CFR 403.12(b) (1-7). The application shall not be considered complete until all information identified on the form is provided, unless specific exemptions are granted by the superintendent of public works. The permit application shall specify the number of hours per month during which the industrial user is in full-time partial operation, and if partial, the extent of such operations. The application shall be certified by a qualified engineer.

(2) Completed applications for new permits shall be made within ninety (90) days after receiving the superintendent of public work's written notification to do so; or longer if specifically authorized; or, for new discharges, at least ninety (90) days prior to the date the discharge is to begin. The required ninety-day lead time for making application for a new discharge may be decreased by the superintendent of public works if requested by the applicant for good and valid cause.

(3) Existing industrial discharges holding a current waste discharge permit shall apply for permit renewal sixty (60) days before the present permit expires. Information to be supplied by present permittee will consist of any changes from present permits that may have been made since the current permit was issued or any addi-

tional information that may be required by the superintendent of public works.

(4) It is the purpose of this section to provide for the recovery of costs from discharges of the city's wastewater disposal system to compensate the city for the costs of the implementation of the program established herein. The applicable charges or fees shall be established by resolution. The city may adopt charges and fees which may include:

- (a) Fees for reimbursement of costs of setting up and operating the city's pretreatment program;
- (b) Fees for monitoring, laboratory analysis, inspections and surveillance procedures, as required by federal pretreatment requirements;
- (c) Fees for reviewing accident-al discharge procedures and construction;
- (d) Fees for permit application;
- (e) Fees for filing appeals;
- (f) Fees for consistent removal by the city of pollutants otherwise subject to federal pretreatment standards;
- (g) Other fees as the city may deem necessary to carry out the requirements contained herein.

#### **4.124 Permit Issuance and Conditions.**

(1) Industrial waste discharge permits shall be issued or denied by the superintendent within 90 days after a completed application for a new permit is received, or within sixty (60) days after a completed renewal application is received. This time schedule may be extended by the superintendent of public works if additional information or an outside consultant is needed to evaluate the application.

(2) Industrial waste discharge permits shall contain conditions which meet the requirements of this code, as well as those or applicable state and federal laws and regulations.

(a) Wastewater permits must contain the following conditions:

i. A statement that indicates permit duration, which in no event shall exceed five years.

ii. A statement that the permit is nontransferable without prior notification to and approval from the city and provisions for furnishing the new owner or operator with a copy of the existing permit.

iii. Effluent limits applicable to the user based on applicable standards in federal, state and local law.

iv. Self-monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sample frequency, and sample type based on federal, state and local law.

v. Statement of applicable penalties for violation of pretreatment standards and requirements, and compliance schedules.

(b) Permits may contain, but need not be limited to, the following:

i. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

ii. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified waste-water pollutants or properties.

iii. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

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iv. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

v. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.

vi. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.

vii. Requirements for installation and maintenance of inspection and sampling facilities and equipment.

viii. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.

ix. Requirements for reporting within 24 hours of becoming aware of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).

x. Compliance schedules for meeting pretreatment standards and requirements.

xi. Requirements for submission of periodic self-monitoring or special notification reports.

xii. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified this code and affording the superintendent of public works, or his representatives, access thereto.

xiii. Requirements for prior notification and approval by the superin-

tendent of public works of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction in the system.

xiv. Requirements for the prior notification and approval by the superintendent of public works of any change in the manufacturing and/or pretreatment process used by the permittee.

xv. Requirements for immediate notification of excessive, accidental, or sludge discharges, or any discharge which could cause any problems to the system.

xvi. A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards including those which become effective during the term of the permit.

(3) If pretreatment facilities are needed to meet the discharge requirements in the discharge permit, the permit shall required the installation of such facilities.

(4) Whenever a discharge requires installation or modification of pretreatment facilities, or a process change necessary to meet discharge standards or spill control requirements, a reasonable compliance schedule shall be included which establishes the date for completion of the changes, and any appropriate interim dates. Such interim dates shall be no more than nine (9) months apart.

(5) The initial permit shall be issued for one (1) year. Subsequent permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for renewal a

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minimum of sixty (60) days prior to the expiration of the user's existing permit.

(6) The superintendent of public works may deny the issuance of a discharge permit if the discharge will result in violation of city, state, or federal laws or regulations; will overload or cause damage to any portion of the POTW; or create an imminent or potential hazard to personnel.

### **4.125 Modification of Permits.**

(1) An industrial waste discharge permit may be modified for good and valid cause at the request of the permittee or at the discretion of the superintendent of public works.

(2) Permittee modification requires shall be submitted in writing to the superintendent of public works and shall contain a detailed description of all proposed changes in the discharge. The superintendent of public works may request any additional information needed to adequately prepare the modification or assess its impact.

(3) The superintendent of public works may deny a request for modification if the change will result in violations of city, state, or federal laws or regulations; will overload or cause damage to any portion of the POTW; or will create an imminent or potential hazard to personnel.

(4) If a permit modification is made at the direction of the superintendent of public works, the permittee shall be notified in writing of the proposed modification at least thirty (30) days prior to its effective date (except in the event of an emergency), and informed of the reasons for the changes. Any requirements for installation of modification of pretreatment and/or monitoring facilities, or process changes, shall include a reasonable time schedule for compliance.

(5) A modification to the permittee's discharge permit must be issued by the superintendent of public works before any significant change is made in the volume or level of pollut-

ants in an existing permitted discharge to the POTW. Changes in the discharge involving the introduction of a waste stream(s) not previously included in the industrial waste discharge permit application or involving the addition of new pollutants shall be considered as new discharges, requiring application under section 4.122 of this code.

(6) Within ninety (90) days of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised by the superintendent of public works to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a National Categorical Pretreatment Standard has not previously submitted as application for a wastewater discharge permit as required by section 4.120, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, any user subject to the National Categorical Pretreatment Standard shall, within 180 days after promulgation of such standards, submit a report to the superintendent of public works in accordance with this code.

**4.128 Permit Transfer.** Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be assigned, transferred, or sold to another user, different premises, or a new or changed operation without the approval of the superintendent of public works. Any succeeding user shall agree in writing to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the superintendent of public works of a transfer, sale, or assignment of the permit.

**4.130 Revocation of Permit.** Any industrial waste discharge permit may be revoked as a result of violations of this code, applicable state

and/or federal regulations, or the conditions of the permit.

#### **4.132 Permittee Monitoring and Reporting.**

(1) Reports of dischargers shall contain all results of sampling and analysis of the discharge. In the case of more frequent monitoring of any pollutant that is required by the City using the procedures prescribed in 40 CFR 403.12(g)(4), the results of this monitoring shall be included in the report. All reported analysis shall be performed in accordance with 40 CFR, Part 136, or with any other test procedures approved by the administrator of the EPA. Any user that is required to have an industrial waste discharge permit pursuant to this code shall submit to the superintendent of public works during the months of June and December, unless required on other dates and/or more frequently by the superintendent of public works, a report indicating the nature of the effluent over the previous six-month period. The report shall include, but is not limited to, a record of the concentrations (and mass if limited in the permit) of the limited pollutants that were measured and a record of all flow measurements that were taken.

(2) The frequency of the monitoring shall be determined by the superintendent of public works and specified in the industrial waste discharge permit. If there is an applicable effective National Categorical Pretreatment Standard, the frequency shall not be less than that prescribed in the standard.

(3) Flows shall be reported on the basis of actual measurement. Pump times or other indirect measurement devices will not be acceptable. The measured flows will be used to complete the sewer service charges. Water use records will be used to compute charges if discharge flows are not metered.

(4) General reporting requirements:

(a) The superintendent of public works may require reporting by other

users that are not required to have an industrial waste discharge permit if information and/or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the POTW.

(b) Requirement for the user who reports noncompliance to notify the city within twenty-four (24) hours and to repeat the sampling and analysis and submit analysis to the city within thirty (30) days after becoming aware of the violation.

(c) Each industrial user shall notify the city, in person or by phone, ninety (90) days prior to the introduction of new wastewater pollutants, changes in manufacturing operations or any substantial change in the volume or characteristics of the wastewater being introduced into the city's wastewater treatment system from the affected industrial user's industrial processes, including substantial changes in the listed or characteristic hazardous wastes for which the user has submitted to the initial notification under 40 CFR 403.12(p). Formal written notifications shall be made at least ten (10) days prior to such introduction and the user shall obtain approval from the city to do so.

(d) Any industrial user discharging hazardous waste shall notify the city in accordance with 40 CFR 403.12p (paragraph 1 through 4). Any industrial user who commenced discharging after August 30, 1990 shall provide notification in accordance with 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

(e) Whenever the EPA publishes new RCRA rules identifying additional

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hazardous wastes or new characteristics of hazardous wastes, any permitted or nonpermitted user must notify the City, EPA RCRA director, and the state hazardous wastes director if any of these wastes are discharged to the city treatment system. The notification must occur within ninety (90) days of the effective date of the published regulation.

(f) All reports and information submitted to the city shall be signed and certified in accordance with CRF 40 403.12(1).

### (5) Monitoring Procedures.

(a) Periodic monitoring shall be performed by either the user or the city to insure compliance with this code and any associated permit. The superintendent of public works may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this code. Such monitoring shall be by any means appropriate to meet the requirements of this code and satisfy the needs of both the city and user,

(b) If the superintendent of public works agrees to perform such periodic compliance monitoring, the superintendent of public works shall charge the user for the monitoring, based upon the costs incurred by the city for sampling and analyses.

(c) The superintendent of public works is under no obligation to perform the periodic compliance monitoring for a user.

(d) Periodic compliance monitoring is that monitoring which is necessary to provide the information on discharge quantity and quality required for the periodic compliance reports.

(e) Samples of wastewater being discharged into the POTW shall be representative of the discharge, and shall be taken after pretreatment, if any, and before dilution by other water. The sampling method shall be one approved by the superintendent of public works and one in accordance with good engineering practices.

(f) Laboratory procedures used in the examination of industrial wastes shall be in accordance with those set for in 40 CFR Part 136 and any amendments thereto. If there are not approved test procedure for a particular pollutant, then analyses shall be performed using other validated procedures approved by the superintendent of public works.

(6) The superintendent of public works may require a user to install and maintain at the user's expense a suitable manhole in the user's building sanitary sewer, or other suitable monitoring access, to allow observation, sampling, and measurement of all industrial wastes being discharged into the POTW. The flow measurement and sampling station shall be located and constructed at the user's expense in a manner acceptable to the superintendent of public works. Complete plans for all phases of the proposed installation, including all equipment proposed for use, shall be submitted to the superintendent of public works for approval prior to construction. Approved measuring and sampling facilities shall be installed and operating within ninety (90) days following written notification to do so by the superintendent of public works. The superintendent of public works may extend this schedule if specifically warranted by equipment delivery delays or construction/installation difficulties beyond the user's reasonable control. Access to the manhole or monitoring facilities shall be available to city representatives at all times.

(7) All devices, access facilities, and related equipment shall be installed by the user at

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the user's expense and shall be maintained by said user so as to be in safe and proper operating conditions at all times, and readily accessible to the superintendent of public works and designated city employees or agents during the operating day.

(8) The user shall keep flow and maintenance/operation records as required by the Superintendent of public works, and shall provide qualified personnel to properly maintain and operate the facilities.

(9) Calibration of flow meters, pH recorders, and samples shall be performed annually (or as required) by a qualified technician. Maintenance and calibration adjustments shall be recorded daily and records shall be readily available to city inspectors. All costs for such calibration as well as maintenance, repair, replacement, or additional equipment needed to reliably and accurately monitor the discharge shall be the user's responsibility.

(10) Bypassing pretreatment or measuring apparatus, shutting off samplers, diluting samples, or other action to defeat accurate measuring and sampling of waste discharges is prohibited.

(11) Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the city within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass and/or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

### **4.134 City Inspection and Sampling.**

(1) Authorized city representatives may inspect the facilities of any user to determine compliance with the requirements of this code.

Facilities having an industrial waste discharge permit shall be inspected at least annually. The user shall allow authorized city representatives to enter upon the premises of the user at all reasonable hours, for the purpose of inspection, sampling, records examination, or in the performance of any of the duties to insure compliance with this code. The city shall also have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations. The right of entry includes, but is not limited to, access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting or otherwise handling waste, and storing records, reports or documents relating to the treatment, sampling or discharge of the wastes, and to make copies of such records, reports, or documents as required.

(2) Where applicable, the user shall make arrangements with its employees so that upon presentation of their credentials, representatives from the city will be permitted to enter, without delay, for the purpose of performing their specific responsibilities.

(3) The following conditions for entry shall be used by city representatives.

(a) The authorized city representatives shall present appropriate credentials at the time of entry.

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling, or testing in accordance with the provisions of this code.

(c) The entry shall be made at reasonable times during normal operating or business hours, unless an emergency situation exists as determined by the superintendent of public works. Reasonable times (in regards to inspection and sampling) includes any time the permittee is discharging to the city sewer system.

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(d) All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the representative(s) entering the premises.

(4) In the event permission to enter has been denied (see subsections 1, 2, and 3 above) the superintendent of public works may request a court order from the municipal judge to enter the property.

(5) Samples that are taken by city personnel for the purpose of determining compliance with the requirements of this code shall be split with the user (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling. The results of all city sample analyses and any inspection reports shall be provide to the user.

### **4.136 Confidential Information.**

(1) Any records, reports or information obtained under this code shall be available to the public or any governmental agency, unless classified by the superintendent of public works as confidential. In order to obtain a classification of confidential on all or part of the records, reports, or information submitted, the user shall:

(a) Submit a written record to the superintendent of public works identifying that the material that is desired to be classified as confidential; and

(b) Demonstrate to the satisfaction of the superintendent that records, reports, and information, or particular parts thereof, if made public would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(2) Information and data on discharge quantity and quality submitted pursuant to this code shall not be classified as confidential pursuant to 40 CFR 2.

(3) Records, reports, or information or parts thereof classified as confidential by the superintendent of public works shall not be released

or made part of any public record or hearing unless such release is ordered by a court of competent jurisdiction. However, such confidential information shall, upon written request, be made available to state or federal agencies having jurisdiction, duties or responsibilities relating to this code, the national Pollutant Discharge Elimination System or state of Oregon waste disposal laws and regulations.

### **4.138 Enforcement.**

(1) The city may, notwithstanding the provisions of this code, terminate or limit the wastewater treatment service, a wastewater discharge permit, and/or municipal water service when such termination or limitation is necessary, in the opinion of the superintendent of public works, to stop any actual or threatened discharge which: presents or may present an imminent or substantial threat to the health and/or welfare of persons or the environment; causes interference or damage to the POTW; or causes the city to violate any condition of its NPDES permit.

(2) Written notice of the termination or limitation shall be given in accordance with this code and shall specify the date when the termination or limitations to be effective.

(3) Any person notified of a termination or limitation of the wastewater treatment service or the wastewater discharge permit shall immediately stop or limit the contribution. In the event of a failure of the person to comply voluntarily with the termination or limitation order, the superintendent of public works shall take such steps as deemed necessary, including immediate severance of the sewer connection and/or termination of municipal water service, to prevent or minimize damage to the POTW or endangerment to any individual. The superintendent of public works shall reinstate the wastewater discharge permit, the wastewater treatment service, and/or municipal water service upon proof of the elimination of the noncomplying discharge. Such proof shall include a detailed writ-

ten report submitted by the user in accordance with this code.

**4.140 Violations, Notifications, and Show-cause Hearings.**

(1) Violation Defined.

(a) Notwithstanding the provision of this code, a violation shall have occurred when any requirement of this code has not been met; or when a written request of the superintendent, made under the authority of this code, is not met within the specified time; or when a condition of a permit or contract issued under the authority of this ordinance is not met within the specified time; or when permitted effluent limitations are exceeded, regardless of intent or accident; or when false information has been provided by the discharger.

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

- i. Chronic violations of wastewater discharge limits defined here as those in which sixty-six percent (66%) or more of all the measurements taken during a six-month period exceeded (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- ii. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceeded the product of the daily maximum limit or the average limit for multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS,

Fats, Oil and Grease, and 1.2 for all other pollutants except pH);

iii. Any other violation of a pretreatment effluent limit (daily maximum or longer-termed average) that the city determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city personnel or the general public);

iv. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;

v. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

vi. Failure to provide within 30 days after the due date, required reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

vi. Failure to accurately report noncompliance;

vii. Any other violation or group of violations which the city determines will adversely affect the operation of implementation of the local pretreatment program.

(2) Each day of continuing violation shall be considered as a separate violation.

(3) Upon determination by the superintendent of public works that a violation has occurred or is occurring, the superintendent of public works may issue a written notice of violation

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to the user which outlines the violation and the potential liability. The notice may further request correction of the violation within a specified time and/or require written confirmation of the correction or efforts being made to correct the violation by a specified date. The notice shall be either personally delivered to the discharger's premises or be sent certified mail, return receipt requested to the discharger's premises. If the user is a corporation, notification may be to the appropriate agent or officer. Emphasis shall be placed on resolving such violations through mutual cooperation, assistance and communication.

(4) Upon determination by the superintendent of public works that a violation has occurred or is occurring:

(a) The superintendent of public works may order the user to show cause why the proposed enforcement action should not be taken. A written notice shall be served on the user specifying the time and place of a hearing to be held by the superintendent of public works regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and the requirement that the user show cause why the proposed enforcement action should not be taken. Notification shall be made at least ten (10) days before the hearing, and in accordance with this code.

(b) At any hearing held pursuant to this code, testimony taken shall be recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of costs thereof.

(c) In the event there is no appeal as provided under section 4.144 of this code, the superintendent of public works shall forward the findings of fact and the recommendation to the city council. After the city council has reviewed the evidence on the record, it may issue an or-

der to the user responsible for the discharge directing that (following a specified time period) the sewer services be discontinued unless:

i. Adequate pretreatment facilities, devices, or other related appurtenances shall have been installed; and/or

ii Existing pretreatment facilities, devices, or other related appurtenances are properly operated and maintained; and

iii. The superintendent of public works shall not collect any penalties assessed in the same manner as all other fees are collected. Further orders and directives as are necessary and appropriate may be issued.

iv. In situations that the superintendent determines to be emergencies, as defined in section 4.142(2)(c), the superintendent may order the discontinuance of sewer service in accordance with section 4.142. City council action is not required under such emergency situations.

(5) The city council may initiate appropriate civil action through the city attorney in a court of competent jurisdiction to enjoin a violation and obtain corrective measure any other appropriate relief if action under subsection (3) and (4) above have not satisfactorily resolved the violation.

(6) Whenever an industrial user has violated or continues to violate the provisions of this code or permit or order issued hereunder, the superintendent of public works, through counsel, may petition the court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the industrial user.

(7) Affirmative Defense:

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(a) Any industrial user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CRF 403.5(a)(1), (b)(3), (4), (5), (6), and (8) in addition to those covered in this code. The industrial users in its demonstration shall be limited to provision of 403.5(1), (2), (i) and (ii), also 40 CFR.

(b) An upset shall be an affirmative defense to an enforcement action brought against a user for violating a pretreatment standard or requirement if the following conditions are met.

i. The user can identify the cause of the upset.

ii. The facility was operating in a prudent and workmanlike manner at the time of the upset and was in compliance with applicable operation and maintenance procedures.

iii. The user submits, within 24 hours of becoming aware of the upset, a description of the discharge and its causes, the period of noncompliance (if not corrected, then the time noncompliance is anticipated to end) and the steps being taken to reduce, eliminate and prevent recurrence of the noncompliance.

iv. If this report is given orally, the user must also submit a written report containing such information within five (5) days unless waived by the superintendent of public works.

v. Upset shall mean an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards and requirements because of factors beyond the reasonable control of the industrial

user. Noncompliance caused by operational error, improperly designed pretreatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation does not constitute and upset.

(c) Bypasses: The intentional diversion of waste streams from any portion of any individual user's treatment facility shall be an affirmative defense to an enforcement action brought against the industrial user if the user can demonstrate that such a bypass was necessary to prevent loss of life, personal injury, or severe property damage. In order to be eligible for the affirmative defense, the industrial user must demonstrate that there was no feasible alternative to the bypass and submit notice of the bypass as required by 40 CFR 403.17.

(8) The superintendent of public works is hereby empowered to enter into consent orders, assurance of voluntary compliance, or other similar documents establishing an agreement with the industrial user responsible for the noncompliance. Such orders will include specific action to be taken by the industrial user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the force and effect as administrative orders issued pursuant to subsections (9) and (10) below and shall be judicially enforceable.

(9) When the superintendent of public works finds that an industrial user has violated or continued to violate this code, permits or order issued hereunder, or any other pretreatment requirement, the superintendent of public works may issue an order to the industrial user directing it to cease and desist all such violations and directing the user to:

(a) Immediately comply with all requirements.

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(b) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(10) When the superintendent of public work finds that an industrial user has violated or continues to violate the code, permits, or orders issued hereunder, or any other pretreatment requirement, he may issue an order to the industrial user responsible for the discharge directing that, following a specific time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenance are installed and properly operated. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. Furthermore, the superintendent of public works may continue to require such additional self-monitoring for at least ninety (90) days after consistent compliance has been achieved, after which time the self-monitoring conditions in the discharge permit shall control.

### **4.142 Revocation of Permit and/or Termination/Suspension of Service.**

(1) The superintendent of public works may terminate a discharge into the POTW, revoke a permit, or suspend such discharge for the specified length of time if:

(a) The discharge presents or may present an imminent and substantial danger to the health or welfare of persons or the environment, or causes interference with the operation of, or damage to, the POTW; or

(b) The permit to discharge into the POTW was obtained by misrepresenta-

tion of any material fact or by lack of full disclosure; or

(c) Directed by the city council or a court of competent jurisdiction in accordance with Section 4.120.

(2) Notice in accordance with section 4.120 (c) of this code shall be provided to the user prior to revoking, terminating, or suspending the discharge; and/or termination, revoking, or suspending the user's municipal water service.

(a) In situations that are not emergencies, the notice shall be in writing; shall contain the reasons for the revocation, termination or suspension; shall contain the effective date, and the name address and telephone number of a city contact; shall be signed by the superintendent of public works; and shall be given ten days prior to the date specified for revocation, termination, or suspension.

(b) In situations that are determined to be emergencies by the superintendent of public works, the initial notice may be verbal or written and shall contain the information required in section 4.120(2)(a). If verbal notice is given, it shall be followed within two (2) working days by a written notice. The effective date of the termination or suspension in emergency situations may be immediately after verbal or written notice has been given as required in this paragraph.

(c) For the purposes of this section, an emergency situation is defined as a situation in which action must be taken as rapidly as possible in order to prevent or reduce an imminent and substantial danger to the health or welfare of the persons, property, or the POTW.

(3) Any user whose permit has been revoked, or whose service has been terminated or suspended, shall immediately stop all discharge of wastewater into the POTW. The superinten-

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dent of public works may, without any liability for prosecution or damages, disconnect or permanently block from the POTW the connection of any user whose permit has been revoked, or whose service has been terminated or suspended, if such action is necessary to insure compliance with the order of revocation, termination or suspension. Similar action to suspend the user's municipal water service may be taken if deemed necessary by the superintendent of public works.

(4) Except in emergency situations as defined in subsection (2)(c) above, the filing of an appeal pursuant to Section 4.142(2)(c) shall stay enforcement of the action by the superintendent of public works under this subsection pending final administrative action the appeal. This provision supplements and does not restrict other provisions of this code, laws, or regulations authorizing termination of service for delinquency in payment of fees or charges.

(5) Decisions by the superintendent of public works to terminate or suspend a discharge shall be made after due consideration of all known facts. Said termination or suspension may be directed only to specific, noncomplying flows within a facility. This section does not require the termination of all user operations, particularly if some operations are not wastewater contributors.

**4.143 Annual Publication of Significant Noncompliance.** A list of all industrial users in significant noncompliance during the twelve (12) previous months shall be annually published by the city in the largest daily newspaper published in the municipality in which the POTW is located. The list shall summarize the violations and enforcement actions undertaken by the City.

### **4.144 Appeal.**

(1) Any person aggrieved by any decision or action of the superintendent under this

code may file a written request with the city administrator for reconsideration thereof within ten (10) days of notification of such decision or action. The notice of appeal shall be on a form provided by the superintendent of public works and shall set forth in reasonable detail the decision or action appealed from and the facts and arguments supporting the appellant's request for consideration. The city administrator shall render a final determination within ten (10) days of the receipt of such request for reconsideration. The city administrator may establish such procedures as may be deemed necessary or property to conduct the reconsideration process. The filing of a request for reconsideration shall be a condition precedent to the right to appeal to the city council pursuant to subsection (2) below. The filing of an appeal shall not stay enforcement of the action by the Superintendent of public works in emergency situations as defined in this code.

(2) Any person aggrieved by the final determination of the city administrator may appeal such determination to the city council within ten (10) days of notification by the city administrator of final determination. An appeal shall be filed in writing to the city council and city administrator together with the payment of a fee, within ten (10) days after receipt of the final determination of the city administrator, and shall set forth in reasonable detail the decision or action appealed from, and the facts and arguments supporting the appellant's request for reversal or modification of the city administrator's determination. The appeal fee shall be set by resolution. The city council shall conduct a hearing on the appeal according to procedures established by the city council. Said hearing shall be conducted at the earliest possible regularly scheduled council meeting, or at a special meeting. Final council action shall be taken on the appeal within sixty (60) days after its initial filing.

**4.145 Records Retention.** All users subject to this code shall retain and preserve for no less than

three (3) years, any records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or on behalf of a discharge in connection with its discharge. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the city pursuant hereto shall be retained any preserved by the user until all enforcement activities have concluded, and all periods of limitations with respect to any and all appeals have expired.

**4.146 Falsifying Information.** Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this code or wastewater discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this code shall be in violation of this code, and upon conviction, be punished as established by this code. In addition, the industrial user shall be subject to: (1) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (2) the provisions of Section 309(c)4 of the Clean Water Act, as amended, governing false statements representation or certification; and (3) the provision of Section 309(c)(6) of the Clean Water Act regarding responsible corporate officers.

**4.147 Penalties and Cost Recovery.**

(1) Any industrial user which has violated or continues to violate this code, any order or permit hereunder, or any other pretreatment requirement shall be liable to the city for a maximum civil penalty of \$1,000 per violation per day for each day of continuing violation. In case of a monthly or other long-term average discharge limit, penalties shall accrue for each business day during the period of this violation.

(a) The superintendent of public works, on behalf of the city, may re-

cover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(b) In determining the amount of civil liability, the court shall taken into account all relevant circumstances, including, but not limited to, the extend of harm caused by the violation, the magnitude and duration, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the user, and any other factors as justice requires.

(2) Cost Recovery.

(a) The superintendent of public works shall recover all reasonable costs incurred by the city as a result of a violation of this code. Said costs include but are not necessarily limited to:

- i. Work necessary to prevent and/or repair damage to the POTW;
- ii. Additional treatment and similar extraordinary measures;
- iii. Any penalties levied against the city for violation of state and/or federal permits resulting from said discharge.

(b) Notification of the costs to be recovered under this section. Such notification shall state the specific violation(s), the damages and penalties sustained by the city, the costs of those damages and penalties, and the costs the superintendent of public works has determined as attributable to the discharge and, therefore, billed to the discharger.

(c) The costs are due and payable by the discharger upon receipt of the letter.

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(d) The superintendent of public works may (with the concurrence of the city administrator) terminate or suspend water service and/or discharge service for nonpayment of costs that the user has been ordered to pay by the city.

(e) The city may place a lien against the discharger's property for nonpayment of costs that the user has been ordered to pay by the city. Upon application by the superintendent of public works, the city council shall order the superintendent of public works or other designated person to prepare a proposed assessment to the user and to file said proposal in with the city recorder. Notice shall be mailed or personally delivered to the user/violator which shall state the amounts of the proposed assessment and the identity of the property to be liened. This notice shall state the amounts to be assessed on the property, fix a date by which any procedural objections shall be filed, and identify a contact person. The city council shall consider any procedural objection and may amend the proposed assessment to the extend of the property to be assessed and the date on which said lien will be docketed.

**4.148 Severability.** If any provision, paragraph, word, section, or article of this code is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, or chapters shall not be affected and shall continue in full force and effect.

**4.149 Conflict.** All ordinances and parts of ordinances inconsistent or conflicting with any part of this code section are hereby repealed to the extent of such inconsistency or conflict.

## WATER REGULATIONS

### **4.150 Connection Fees and Meter**

**Charges.** The charges for water connections and water meters shall be established by resolution of the Lafayette city council.

### **4.151 Connection to Water System Re-**

**quired.** All new construction within the city intended for habitation or public gatherings, or that will be used for commercial or industrial uses, other than storage, shall be connected to the city water system.

### **4.155 Rates.**

(1) **Monthly Rates.** The monthly rates for users of water from the Lafayette water system shall be established by resolution of the Lafayette city council. The resolution in effect on the effective date of this ordinance shall remain in effect until amended by the city council.

(2) **Bulk Water Charges.** A special bulk water charge may be charged to bulk users, such as commercial cleaning services, commercial spraying businesses, and other commercial bulk users of water recognized by the city. Bulk water users shall pay at the rate established by resolution of the Lafayette city council. Each bulk user shall obtain a permit from the public works department, which permit shall be free of charge. The user may be required to pay a refundable cash deposit in an amount established by resolution of the city council before the permit is granted. To acquire the permit, the applicant's tankers shall be inspected by the city water department personnel for cross connection control devices and valve compliance. The permit shall specify exactly the location of the hydrant to which connection is permitted along with a tally sheet to log consumption. The permit holder shall submit the tally sheet to the city at the first of each month following usage in the past month for billing purposes. Failure of the bulk user to fulfill these conditions shall be justification for

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the city to cancel the permit and keep the refundable deposit.

(4) **Water meter size requirements.**

All services shall have the proper size meters as designated and approved by the superintendent of public works on existing and future installations.

**4.160 Use of Water.** No person supplied with water from the city mains will be entitled to use it for any purpose other than stated in his or her application, or to supply in any way other persons or families.

**4.165 Service Pipe Standards.** Service pipes of all sizes, within or without the premises, whether for domestic, commercial, or fire protection purposes, must be materials, quality, class, and size as specified by the state plumbing code or regulations of the city.

**4.170 Installation of Service Pipes.** The installation of all service pipes from the main to the meter shall be made by employees of the city public works department or the city's subcontractor.

**4.175 Installation of Fire Services, Larger Diameter Meters, Infill Development and Infill Fire Hydrants, and Related Minor Main Extensions or System Modifications.**

(1) The public works department, or its subcontractor, will be the responsible party for the installation of water services, meters, and necessary appurtenances described in this section. Developers or their contractors or agents will not be allowed to make these connections in the public right-of-way.

(2) If the city designs these installations, design costs will be billed to the developer along with all construction costs pursuant to section 4.150. If the developer designs the installations, the design must be approved in advance by the public works department.

**4.180 Service Pipe Maintenance.** The service pipe within the premises and throughout its entire length to the water meter or to the property line if the water meter is set behind the property line, must be kept in repair and protected from freezing at the expense of the customer, lessee, or agent, who must be responsible for all damages resulting from leaks or breaks.

**4.190 Separate Service Pipe Required.** A metered service connection will be required for each single-family residence that is to be supplied with water.

**4.195 Prohibited Use of Water.**

(1) Water will not be furnished where there are defective or leaking faucets, closets, or other fixtures, or where there are water closets or urinals without self-closing valves, or tanks without self-acting float valves; and when such may be discovered, the supply may be withdrawn.

*[Sec Deleted by Ord 499 on Sep 10, 1998]*

(2) No new water service will be installed to any structure, building, or premises, until all provisions of the city's building, zoning, subdivision, and sewer ordinances have been complied with. Service may be installed on a temporary basis for use in the construction of a building or structure but such temporary service may be disconnected in the event of failure to comply with all provisions of such ordinances.

**4.200 Alteration to or Operation of the System.** The operation and repair of the city's water system, including pipes, valves, pumps, reservoirs, fixtures, meters, etc., is the complete responsibility of the city's public works department. No property owner, plumber, contractor, or other person will be allowed to connect to or operate any part of the city's water system up to and including the water meter. Operation of, or tampering with, the city's water system by an unauthorized person shall be a Class A infraction.

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**4.205 Water Shut Off--Notice.** The water may at any time be shut off from the mains for repairs or other necessary purposes with notice to be given as hereinafter provided, and the city will not be responsible for any consequent damages. Water for steam boilers for power purposes will not be furnished by direct pressure from the city mains; tanks for holding an ample reserve of water shall always be provided by the customer. Except in the event of emergency repairs, such as necessitated by a broken water line, the Lafayette public works department will give at least twenty four hours notice of shut off by door hanger or phone call to the affected customers.  
[Amended by Ord. 565 on Jan. 8, 2004]

**4.210 Right of Inspection.** Agents of the Lafayette public works department may have free access at proper hours of the day to all parts of the building and premises in which water may be delivered from the city mains for the purposes of inspecting the condition of the pipe fixtures, the manner in which the water is used and to read meters.

(1) A property owner or occupant of a property shall not prevent agents of the Lafayette public works from performing the above duties by blocking or physically obstructing access, preventing access by the presence of an animal or animals that threaten or endanger an agent's safety, or by damaging the water system.

**4.215 Buildings Not Supplied With City Water.** Buildings supplied with water other than that furnished by the city may obtain city water at meter rates, providing that no physical connection shall in any way, directly or indirectly, exist between the private system and the city's water system. When such connection is found to exist, the water will be shut off.

**4.220 Meter Test.** The public works department will, upon request, have a meter tested for accuracy. Should a consumer desire the meter

to be tested, consumer will be required to make a deposit of \$20 to cover the cost of making such test. The meter will then be tested. Should such meter show an error of over five percent in favor of the Lafayette public works department, the \$20 deposit will be refunded to the consumer. If the test of such meter would show an accurate measurement of the water, or should it show an error in favor of the consumer, the \$20 deposit will be retained by the public works department to cover the expense of such test.

**4.225 Violation.** Violation of any of the provisions of sections 4.150 to 4.265 shall constitute a Class A infraction.

**4.230 Compliance Required.** The foregoing rules and regulations must be strictly complied with in every instance and water must be paid for by all premises supplied according to the water rates established by the city council by resolution.

**4.235 Responsibility for Water Charges, Delinquent Payment, Water Shut Off for Nonpayment, Security Deposit Required and Charge for Nonsufficient Funds.**

(1) The customer shall be responsible for all charges for water service.

(2) Whenever any water charge is not paid when due, the water department may discontinue service by shutting off water service for nonpayment. Water shall not be returned to service until the customer pays their account balance in full and a \$30 reconnect fee is paid. Upon receipt of these payments at the city water office during regular office hours, the customer's water service will be restored by the city as soon as reasonably possible. Written notice for discontinuing water service for nonpayment of water charges shall be given to the customer by regular mail at least 10 days in advance of the shut off, and by posting a notice on the premises at least 48 hours in advance of the shut off. The notice shall state that if the charges are disputed, the re-

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sponsible customer may request an informal conference with the city administrator or his/her designee. Such request must be received not later than 2 days prior to the scheduled shut off date. *[Amended by Ord 509 on Feb 11, 1999 and by Ord. 565 on Jan. 8, 2004]*

(3) The city may require security (cash) deposits prior to providing, or to continue to providing, water service to any customer. The amount of the security deposit shall be established by resolution of the city council and shall be not be less than one or more than four months minimum billing charges.

(4) Returned checks will result in a returned check fee of \$25 being added to the account. When a customer's check is returned, the customer shall be notified the same day. The check must be replaced within 3 business days with cash or a money order or the water service will be shut off on the 4<sup>th</sup> day. Once a customer has had two returned checks in any 12 month period, future utility payments must be made in the form of cash or money order for the following 12 month period. After that the customer may again pay by check, but will be returned to a cash-only status for another 12 months if there is one returned check.

*[Amended by Ord. 565 on Jan. 8, 2004]*

(5) All delinquent water charges against owner-occupied properties shall be and become a lien against the premises on which the water was used and the owner/occupant of any such premises shall be responsible for the payment thereof. The entry of charges on the city's ledgers or other records pertaining to its lien shall be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for services remains unpaid, the lien hereby created may be foreclosed in the manner provided for by ORS 223.610, or in any other manner provided by law or city ordinance. The city shall have the right to refuse wa-

ter service to the premises until the lien has been paid.

*[Amended by Ord. 565 on Jan. 8, 2004]*

**4.236 Other Water Shut Off Provisions.** Water Service may be shut off by the City for any of the following:

(1) Interference by the customer with the City's ability to inspect or read a water meter;

(2) Interference by the customer with the City's right, pursuant to Section 4.210, to have free access to any of the City's mains, pipes, fixtures or meters; or

(3) Where there are defective or leaking faucets, closets or fixtures, or where there are water closets or urinals without self-closing valves, or tanks without self-acting float valves in the customer's private water system in violation of Section 4.195, or where the customer has a leak in any other part of his private water system, including, but not limited to, any pipe, joint, water heater, valve, fixture, etc., and the customer, despite written notice by the City to do so, fails or refuses to repair or abate the same.

Water shall not be returned to service after any such shut off until the reason for the shut off has been fully abated by the customer at the customer's expense and until the customer has paid a \$30 reconnect fee. Written notice for discontinuance of water service under this section shall be given to the customer by regular mail, or by posting a notice on the premises at least 10 days in advance of the shut off. The notice shall state that if the reason for shut off is disputed, the responsible customer may request an informal conference with the city administrator or his/her designee. Such request must be received not later than 2 days prior to the scheduled shut off date. Service will be reconnected in accordance with the terms and provisions for reconnection in Section 4.235 (2). *(Added by Ord 510 on Mar 11, 1999)*

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**4.240 Permits--Customer's Consent Required.** Applications for permits to connect premises with the city water system, or requests to turn off water, or to turn on water, shall, in all cases, be in writing and signed by the customer.

**4.245 Limitations on Use.** The city administrator shall have full power and authority at any time to declare that a shortage of water exists and to prescribe definite hours for use or nonuse of water through hose or other sprinkling devices; such regulations are to be immediately effective and are to be enforced by the superintendent of public works. Violation of these rules may be cause for turning off water service.

**4.250 Findings and Declaration of a Water Emergency.** Upon a finding that the municipal water supply system is incapable of providing an adequate water supply for normal usage due to a prolonged drought, system failure, or any other event, the city administrator, after consultation with the mayor, may declare that water usage must be curtailed. The declaration shall include the effective date, the reason for the declaration, and the level of prohibition declared. After the city administrator's declaration, the city council shall examine the declaration and any curtailment actions. The council may there after take whatever steps it deems necessary to address the water emergency, including continuing the restrictions and limitations imposed by the city administrator, modifying them, or eliminating them if the council finds that the emergency has been abated or eliminated. The city council may include an estimated time for review or revocation of the declaration.

(1) If the city administrator fails or is unable to declare a water emergency, the city council has the right to do so, providing it makes the necessary written findings and sets out the facts giving rise to the water emergency.

### **4.255 Levels of Prohibition.**

(1) Level I- Odd/Even Watering- The following activities are required under a Level I declaration:

- (a) Even numbered addresses can only water on even numbered days of the month.
- (b) Odd numbered addresses can only water on odd numbered days of the month.

[Amended by Ord. 565 on Jan. 8, 2004]

(2) Level II - Limited. The following activities or actions are prohibited under a Level II declaration:

(a) Watering, sprinkling or irrigating lawn, grass or turf; exceptions:

i. New lawn, grass or turf that has been seeded or sodded 90 days prior to declaration of a water shortage may be watered as necessary until established;

ii. High-use athletic fields that are used for organized play.

(b) Watering, sprinkling or irrigating flowers, plants, shrubbery, ground-cover, crops, vegetation, or trees except from 6:00 p.m. to 10:00 a.m.;

(c) Washing, wetting down, or sweeping with water, sidewalks, walkways, driveways, parking lots, open ground or other hard surfaced areas; exceptions:

i. Where there is a demonstrable need in order to meet public health or safety requirements, such as: to alleviate immediate fire or sanitation hazards; for dust control to meet air quality requirements mandated by the Oregon Department of Environmental Quality;

ii. Power washing of buildings, roofs and homes prior to painting,

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repair, remodeling or reconstruction, and not solely for aesthetic purposes.

(d) Washing trucks, cars, trailers, tractors or other land vehicles or boats or other water-borne vehicles, except by commercial establishments or fleet washing facilities which recycle or reuse the water in their washing processes, or by bucket and hose with shut-off mechanism; exceptions:

i. Where the health, safety and welfare of the public is contingent upon frequent vehicle cleaning, such as: to clean garbage trucks and vehicles that transport food and other perishables, or otherwise required by law. Owners/operators of these vehicles are encouraged to utilize establishments which recycle or reuse the water in their washing process.

(e) Cleaning, filling or maintaining decorative water features, natural or manmade, including but not limited to, fountains, lakes, ponds and streams, unless the water is recirculated through the decorative water feature. Water features which do not include continuous or constant in-flowing water are not included.

(f) Wasting water by leaving unattended hoses running.

(g) Other actions deemed necessary by the city administrator.

(3) Level III - Moderate. The following activities or actions are prohibited under a Level III declaration; where not covered, the Level II restriction still applies:

(a) Watering of any lawn, grass or turf, regardless of age or usage.

(b) Watering, sprinkling or irrigating flowers, plants, shrubbery, ground-cover, crops, vegetation, or trees.

(c) Washing of vehicles other than in establishment which recycles its water.

(d) Power washing of buildings, regardless of purpose, is prohibited.

(4) Level IV - Severe. In addition to the restrictions in Level III, the following actions may be taken under Level IV:

(a) Restriction or limitation of residential usage.

(b) Restriction or limitation of activities which require or may require the need for water supplies. By way of example, this restriction might be placed upon a fireworks display which would otherwise be allowed under state law and local ordinance.

(c) Any restriction which is identified by the city administrator.

(d) Any restriction which is identified by the fire chief.

(5) Failure of any water user to receive actual notice of the declaration of a water emergency or the actions deemed necessary by the city administrator to address the emergency shall not relieve the user of obeying any restrictions or restrictions on the use of water imposed by the city administrator.

### 4.260 Enforcement.

(1) Warning. Each violation shall receive a warning. The letter of warning shall be in writing, shall specify the violation, may require compliance measures, and shall be served upon the resident either personally, by office or substitute service, or by certified or registered mail, return receipt requested.

(2) Citation. After the resident has received a warning letter, any subsequent violation shall be treated as a civil infraction pursuant to sections 1.215 to 1.260 of the Lafayette Municipal Code. No forfeiture assessed for violation of this ordinance shall be less than \$100 nor more than \$500 for each violation.

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### 4.265 Penalties.

(1) First violation - Warning letter.

(2) Second violation of same type - Class C infraction \$100.

(3) Third violation of same type - Class B infraction \$250.

(4) Fourth and subsequent violation - Class A infraction \$500.

(5) Third and subsequent violations under Level IV may include water shut-off.

(6) In addition, the city may bring an action against any person, entity, or other water user violating the terms of any restriction or limitation imposed by the city pursuant to sections 4.245 to 4.270. In such event, the city shall be entitled to all costs and expenses (including attorney's fees) caused or resulting from the user's failure or refusal to comply with the terms of the restrictions imposed by the city administrator or council.

**4.270 Amendments, Special Rules, Contracts.** The city council shall have the power, at any time, to amend, change, or modify any rule, rate, or charge, and to make special rules, and contracts, and all water service is subject to such power.

## WATER SUPPLY CROSS CONNECTION

**4.300 Purpose and Scope.** The purpose of sections 4.300 to 4.330 is to protect the public health of water consumers by the control of actual and/or potential cross connections to customers.

**4.305 Definitions.** For purposes of sections 4.300 to 4.330, the following mean:

Backflow. The undesirable reversal of water or mixtures of water and other liquids, gases or other substances into the distribution

pipes of the potable supply of water from any source or sources.

Backflow prevention device (approved). A device that has been investigated and approved by the regulatory agency having jurisdiction. The approval of backflow prevention devices by the regulatory agency should be on the basis of a favorable laboratory and field evaluation report by an "approved testing laboratory," recommending such approval.

Backflow prevention devices (type). Any approved device used to prevent backflow into a potable water system. The type of device used should be based on the degree of hazard either existing or potential.

Contamination. The entry into or presence in a public water supply system of any substance which may be deleterious to health and/or quality of the water.

Cross connection. Any unprotected actual or potential connection or structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substance other than the intended potable water with which the water, industrial fluid, gas, or substance other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur are considered to be cross connections.

Superintendent of Public Works. The superintendent of public works of the city of Lafayette, or authorized agent.

Hazard, degree of. Derived from the evaluation of a health, system, plumbing or pollution hazard.

Hazard, health. An actual or potential threat of contamination of a physical or toxic na-

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ture to the public potable water system or the consumer's potable water system that would be a danger to health.

Hazard, plumbing. An internal or plumbing type cross connection in a consumer's potable water system that may be either a pollutional or a contamination type hazard. This includes, but is not limited to, cross connections to toilets, sinks, lavatories, wash trays, domestic washing machines and lawn sprinkling systems. Plumbing type cross connections can be located in many types of structures including homes, apartment houses, hotels and commercial or industrial establishments.

Hazard, pollutional. An actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system but which would not constitute a health or system hazard, as defined. The maximum degree of intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause minor damage to the system or its appurtenances.

Hazard, system. An actual or potential threat of severe danger to the physical properties of the public or consumer's potable water system or a pollution or contamination which would have a protected effect on the quality of the potable water in the system.

Health Division Officer. The Oregon State Health Division Officer, or authorized agent.

Potable water supply. Any system of water supply intended or used for human consumption or other domestic use.

**4.310 Cross Connections.** The installation or maintenance of a cross connection which will endanger the water quality of the potable water supply system of the city shall be unlawful and is prohibited. Any such cross connection now existing or hereafter installed is declared to be a

public hazard and the same shall be abated. The control or elimination of cross connections shall be in accordance with sections 4.300 to 4.330 and in compliance with the Oregon Administrative Rules Chapter 333 Public Water Systems Section 61-070. The city administrator shall have the authority to establish requirements more stringent than state regulations if he deems that the conditions so dictate. The city shall adopt rules and regulations as necessary to carry out the provisions of sections 4.300 to 4.330. The building official is authorized to enforce the provisions of sections 4.300 to 4.330 in the inspection of existing, new, and remodeled buildings.

### **4.315 Use of Backflow Prevention Devices.**

(1) No water service connection to any premises shall be installed or maintained by the city unless the water supply is protected as required by state law and regulation and sections 4.300 to 4.330. Service of water to any premises shall be discontinued by the city if a backflow prevention device required by sections 4.300 to 4.330 is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

(2) The customer's system should be open for inspection and tests at all reasonable times to authorized representatives of the city to determine whether cross connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the Cross Connection Inspector shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with the state and city statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

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(3) An approved backflow prevention device shall also be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line.

(4) Backflow prevention devices shall be installed under circumstances including but not limited to the following:

(a) Premises having an auxiliary water supply;

(b) Premises having cross connections that are not correctable, or intricate planning arrangements which make it impractical to ascertain whether or not cross connections exist;

(c) Premises where entry is restricted so that inspections for cross connections cannot be made with sufficient frequency or at sufficiently short notice to assure that cross connections do not exist;

(d) Premises having a history of cross connections being established or re-established;

(e) Premises on which any substance is handled under pressure so as to permit entry into the public water supply, or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters;

(f) Premises where materials of a toxic or hazardous nature are handled in such a way that if back siphonage should occur, a serious health hazard might result;

(g) The following types of facilities will fall into one of the above categories where a backflow prevention device is required to protect the public water supply. A backflow prevention device shall be installed at these facilities unless the city determines that no hazard exists:

i. Hospitals, mortuaries, clinics,

ii. Laboratories,

iii. Metal plating industries,

iv. Piers and docks,

v. Sewage treatment plants,

vi. Food or beverage processing plants,

vii. Chemical plants using a water process,

viii. Petroleum processing or storage plants,

ix. Radioactive material processing plants or nuclear reactors,

x. Facilities with fire service lines as specified by Oregon State Health Division,

xi. Others specified by the purveyor.

(5) The type of protective device required shall depend on the degree of hazard which exists:

(a) An air-gap separation or a reduced-pressure principle backflow prevention device shall be installed where the public water supply may be contaminated with sewage, industrial waste of a toxic nature, or other contaminant which could cause a health or system hazard.

(b) In the case of a substance which may be objectionable but not hazardous to health, a double check valve assembly, air-gap separation, or a reduced-pressure-principal backflow prevention device shall be installed.

(6) Backflow prevention devices required by sections 4.300 to 4.330 shall be installed under the supervision, and with the approval, of the city.

(7) Any protective device required by sections 4.300 to 4.330 shall be approved by the Cross Connection Inspector.

(8) These devices shall be furnished and installed by and at the expense of the customer.

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(9) It shall be the duty of the customer-user at any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the Cross Connection Inspector deems the hazard to be great enough he may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by a certified tester approved by the Cross Connection Inspector. The City may choose to enter into a contract with a licensed tester who will provide multiple backflow tests for a reduced price. The customer must give written consent to have the device tested by the contracted tester and the fee will be added to the customer's utility bill. It shall be the duty of Cross Connection Inspector to see that these timely tests are made. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever said devices are found to be defective. Records of such tests, repairs and overhaul shall be kept and copies sent to the Cross Connection Inspector.

(10) No underground sprinkling device will be installed without adequate backflow prevention devices.

(11) Failure of the customer to cooperate in the installation, maintenance, testing or inspection of backflow prevention devices required by sections 4.300 to 4.330 or by state law shall be grounds for the termination of water service to the premises.

[Amended by Ord. 565 on Jan. 8, 2004]

### **4.320 Cross Connection Inspection.**

(1) No water shall be delivered to any structure hereafter built within the city of Lafayette or within areas served by city water until the same shall have been inspected by the city for possible cross connections and been approved as being free of same.

(2) Any construction for industrial or other purposes which is classified as hazardous

facilities where it is reasonable to anticipate intermittent cross connections, or as determined by the city administrator or his/her designated representative, shall be protected by the installation of one or more backflow prevention devices at the point of service from the public water supply or any other location designated by the city.

(3) Inspections shall be made at the discretion of the city administrator or his/her designated representative of all buildings, structures, or improvements for the purpose of ascertaining whether cross connections exist. Such inspections shall be made by the city.

**4.325 Liability.** Sections 4.300 to 4.330 shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or testing herein, or the failure to inspect or test or by reason of approval of any cross connections.

**4.330 Penalties.** Violation of any rule or regulation contained herein shall constitute a Class A infraction.

## **REIMBURSEMENTS FOR IMPROVEMENTS**

**4.400 Definitions.** The following terms are definitions for the purposes of this section:

City Engineer or Engineer means the person holding the position of city engineer or any officer or employee designated by that person to perform duties stated within this section.

City means the city of Lafayette.

Person means a natural person, the person's heirs, executors, administrators, or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent employee or any representative thereof.

Applicant means a person, a defined above, who is required or chooses to finance some or all of the cost of a street, water or sewer

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improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement. The “applicant” may be the city.

Street Improvement means a street or street improvement conforming with standards in the Lafayette community development code and including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public right-of-way.

Water Improvement means a water or water line improvement conforming with standards in the Lafayette community development code and including but not limited to extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.

Sewer Improvement means a sewer or sewer line improvement conforming with standards in the Lafayette community development code and including but not limited to extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line.

Public Improvement means any construction, reconstruction or upgrading of a water, sanitary sewer or storm sewer line, public street (including bicycle lanes) or sidewalk or undergrounding of public utilities.

Front Footage means the linear footage of a lot or parcel owned by an intervening property owner which is served by a reimbursement district public improvement and on which the intervening property owner’s portion of the reimbursement is calculated. Front footage shall be the amount shown on the most recent county tax assessor maps for the intervening property or, in the event such information is not available, any other reasonable method established by the city engineer for calculating front footage. Front

footage excludes the front footage of property owned by the city, including rights-of-way, but includes the development.

Reimbursement Agreement means the agreement between an applicant and the city which is authorized by the city council and executed by the city administrator providing for the installation of and payment for reimbursement district public improvements.

Reimbursement District means the area which is determined by the city council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

Reimbursement Fee means the fee required to be paid by a resolution agreement. The city council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, waste or sewer improvement within the reimbursement district.

Utilize means to apply for a building permit which will use or increase the use of a public improvement, to connect to a public improvement, or to otherwise increase the use of an improvement.

### **4.405 Application for a Reimbursement District.**

(1) Any person who is required to or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the city engineer, request that the city establish a reimbursement district. The street, water and sewer improvements must include improvements in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval or must be available to provide ser-

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vice to property other than property owned by the applicant. Examples include but shall not be limited to full street improvements instead of half street improvements, off-site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The city may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this code.

(2) The application shall include the following:

(a) A description of the location, type, size, and cost of the public improvement to be eligible for reimbursement.

(b) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

(c) Post-construction: the actual cost of the improvement as evidenced by receipts, invoices, or other similar documents. Pre-construction; the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the city engineer.

(d) Post-construction: the date the city accepted the public improvements. Pre-construction: the estimated date of completion of the public improvements.

**4.410 City Engineer's Report.** The city engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The engineer may require the submittal of other

relevant information from the applicant in order to assist in the evaluation. The engineer shall prepare a written report for the city council, considering and making recommendations concerning the following factors:

(1) Whether the applicant will finance or has financed some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant.

(2) The area to be included in the reimbursement district.

(3) The actual or estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the costs for which the applicant should be reimbursed for each improvement.

(4) A methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the city engineer. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location.

(5) The annual fee adjustment which shall be applied to the reimbursement fee beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the city. The annual fee adjustment shall be fixed and determined by the city council and computed against the reimbursement fee as simple interest and will not compound. The city engineer may take into account the cost of any financing, including prepayment penalties, loan fees, the actual percent-

age rate of interest being paid by the applicant, and opportunity costs lost when recommending the annual fee adjustment to the city council.

(6) The amount to be charged to the city for administration of the agreement by the city. The administration fee shall be fixed by the city council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the agreement is signed.

(7) The period of time that the right to reimbursement exists if the period is less than five years.

(8) Whether the street, water, and sewer improvements will or have met the city standards.

**4.415 Amount to be Reimbursed.**

(1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, including the acquisition and condemnation costs of acquiring additional right-of-way, the cost of permits, engineering and legal expenses, and the annual fee adjustment fixed and determined by the city council.

(2) A reimbursement fee shall be computed by the city for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The fee shall be calculated separately for each type of improvement. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

**4.420 Public Hearing.**

(1) Within a reasonable time after the city engineer has completed the report required in section 4.410 of this code, the city council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district

does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The city council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

(2) If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the city. At that time, the city council may modify the resolution to reflect the actual cost of the improvement.

**4.425 Notice of Public Hearing.** Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this code, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the city councils action to approve the same.

**4.430 City Council Action.**

(1) After the public hearing held pursuant to subsection 4.120(1) of this code, the city council shall approve, reject, or modify the recommendations contained in the city engineer's report. The city council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include a city engineer's report as approved or modified, and specify that payment of the reimbursement fee, as designed for each parcel, is a precondition

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of receiving city permits applicable to development of that parcel as provided for in section 4.450 of this code.

(2) When the applicant is other than the city, the resolution shall instruct the city administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement, at a minimum, shall contain the following provisions.

(a) The public improvement(s) shall meet all applicable city standards.

(b) The total amount of potential reimbursement to the applicant.

(c) The total amount of potential reimbursement shall not exceed the actual costs of the public improvement(s).

(d) The annual fee adjustment set by the city council.

(e) The applicant shall guarantee the public improvement(s) for a period of 12 months after the date of installation.

(f) The applicant shall defend, indemnify and hold harmless the city from any all losses, claims, damage, judgments, or other costs or expense arising as a result of or related to the city's establishment of the district.

(g) The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners.

(h) Other provisions as the city council determines necessary and proper to carry out the provisions of this code.

(3) If a reimbursement district is established by the city council, the date of the formation of the district shall be the date that the city council adopts the resolution forming the district.

**4.435 Notice of Adoption of Resolution.** The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee.

**4.440 Recording the Resolution.** The city recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the county recorder so as to provide notice to potential purchasers of property within the district. Said recording shall not create a lien. Failure to make such recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

**4.445 Contesting the Reimbursement District.** No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of charge designated for each parcel, shall be filed after 60 days following the adoption of a resolution establishing a reimbursement district.

**4.450 Obligation to Pay Reimbursement Fee.**

(1) The applicant for a permit related to property within any reimbursement district shall pay to the city, in addition to any other applicable fees and charges, the reimbursement fee established by the city council, together with the annual fee adjustment, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the city for any of the following activities:

(a) To apply for a building permit which will use or increase the use of a public improvement;

(b) To connect to a public improvement or otherwise increase the use of a public improvement.

(2) "Increase the use" means:

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(a) For sanitary sewer or storm sewer lines: to make a physical change requiring a building or development permit on the intervening property which increases the volume discharged into that line.

(b) For water lines: to make a physical change required a building or development permit on the intervening property which increases the amount of water uses.

(c) For public streets: to make a physical change required a building or development permit on the intervening property which increases the trips on the street or creates a new entrance onto the street.

(3) The city's determination of who shall pay the reimbursement fee is final. Neither the city nor any officer or employees of the city shall be liable for payment of any reimbursement fee, annual fee adjustment, or portion thereof as a result of this determination.

(4) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this code is intended to modify or limit the authority of the city to provide or required access management.

(5) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in this section of the code unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. Where approval is given as specified in subsection (1) above, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(6) The date when the right of reimbursement ends shall not extend beyond five years from the district formation date. Upon application for an extension by the applicant, the city council may, by resolution, authorize up to two (2) five-year extensions of the right of reimbursement under the agreement.

(7) The reimbursement fee is immediately due and payable to the city by intervening property owners upon utilization of a public improvement. If connection is made or construction commenced without required city permits, then the reimbursement fee immediately due and payable upon the earliest date that any such permit was required. No city permit of any kind for the intervening property shall be issued until the reimbursement fee is paid in full.

(8) Whenever the full reimbursement fees has not been paid and collected for any reason after it is due, the city administrator shall report to the city council the amount of the uncollected reimbursement, the legal description of the intervening property on which the reimbursement is due, the date upon which the reimbursement was due and the intervening property owner's name or names,. The city council shall then, by motion, set a public hearing date and direct the city administrator to give notice of that hearing to each of the identified intervening property owners, together with a copy of the city administrator's report concerning the unpaid reimbursement fee. Such notice may be either by certified mail or personal service. At the public hearing, the city council may accept, reject or modify the city administrator's report. If the city council accepts or rejects the city administrator's report and determines that the reimbursement fee is due but has not been paid for whatever reason, the city may take any action including all legal or equitable means necessary to collect the unpaid amount. An unpaid reimbursement fee shall prohibit any issuance of permits by the city for the intervening property.

**4.455 Public Improvements.** Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city.

**4.460 Multiple Public Improvements.** More than one public improvement may be the subject of a reimbursement district.

**4.465 Collection and Payment: Other Fees and Charges.**

(1) Developers shall receive all reimbursement collected by the city for their public improvements. Such reimbursement shall be delivered to the developer for as long as the reimbursement district agreement is in effect. Such payments shall be made by the city within 90 days of receipt of the reimbursements.

(2) The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city.

**4.470 Fees Imposed—Tax Limitations.** The city council finds that the fees imposed by this code section are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.