

Lafayette Code

Chapter 8

BUILDING

**BUILDING CODE**

**8.000 Administration and Enforcement.**

(1) The city shall, upon approval of the State of Oregon Department of Consumer and Business Services, provide for the administration of all plan checking, permit, and inspection programs that have been delegated by the state. The city program is applicable to public building, including state building, as well as private building.

(2) As modified by sections 8.000 to 8.115. The standards applicable to buildings shall be as listed in sections 8.055 to 8.085.

**8.005 Title.** These regulations shall be known as the city of Lafayette building code, may be cited as such and will be referred to herein as “this code.”

**8.010 Purpose.** This code will establish uniform performance standards providing safeguards for health, safety, welfare, comfort and security of these occupants and users of buildings in the city of Lafayette and for the use of modern methods, devices, materials, techniques and practicable maximum energy conservation.

**8.015 Scope.** This code shall apply to the construction, alternation, moving, demolition, repair, maintenance and work associated with any building or structure except those located in a public way. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall control.

**8.020 Definitions.** For the purpose of the code, the following definition shall apply:

Building Official is the city administrator who is the duly appointed officer or other designated authority charged with the administration and enforcement of this code, and includes the building official’s duly authorized deputies, officers, and inspectors.

**8.025 Alternate Materials and Methods.** The provisions of this code are not intended to prevent the use of any alternate material, design or method of construction not specifically prescribed in this code, provided such alternate has been approved and its use authorized by the building official. The building official may approve any such alternate material, design or method, provided the building official specifically finds the proposed material, design or method complies with the provisions of this code and that is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation. The building official shall require that evidence or proof be submitted to substantiate any claims that may be made regarding the alternate materials, designs or methods. The details of any approval of any alternate material, design or method shall be recorded and entered in the files of the agency.

**8.030 Modifications.** When there are practical difficulties in carrying out the provisions of this code, the building official may grant modifications provided the building official finds the modification is in conformance with the intent and purpose of this code and that said modification does not lessen any fire-protection requirements nor the structural integrity of the

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building involved. Any action granting modification shall be recorded in the files.

**8.035 Tests.** Whenever there is insufficient evidence of this compliance with the provisions of this code or that any material, method or design does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to the city of Lafayette. Test methods shall be as specified by this code or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall have the sole and exclusive authority to determine appropriate test procedures. All tests shall be made by an approved testing agency. Reports of such tests shall be retained by the building official for the period required for the retention of similar public records.

### **8.040 Powers and Duties of Building Official.**

(1) building Official. The building official is authorized to enforce all the provisions of this code. The building official shall have the power to render written and oral interpretations of this code and to adopt and enforce administrative procedures in order to clarify the application of its provisions.

(2) Deputies. In accordance with prescribed procedures and with the approval of the city, the building official may appoint or contract technical officers and inspectors and other employees to carry out the functions set forth herein. The building official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction, so far as is required in the discharge of the duties required by this code or other pertinent law or ordinance.

(3) Liability Limitation. The building official charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not

thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the building official or employee because of such act or omission performed by the building official or employee in the enforcement of any provision of such codes or other pertinent laws or ordinances implemented through the enforcement of this code or enforced by the code enforcement agency shall be defended by the city of Lafayette until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the city of Lafayette. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city of Lafayette be held assuming any such liability by reason of the inspections authorized by this code or any permit or certificates issued under this code.

(4) Right of Entry. When it may be necessary to inspect a building in order to enforce the provisions of this code, or the building official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to, in violation of this code or which otherwise makes the building or premises unsafe, dangerous or hazardous, the building official may enter said building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have the right to seek a search warrant from a judicial officer, including the municipal judge, in order to secure entry.

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(5) Stop Work Orders. Whenever any work is being done contrary to the provisions of this code (or other pertinent laws or ordinances implemented through its enforcement), the building official may order the work stopped by giving notice in writing served on any person(s) engaged in the doing or causing of such work to be done. Such person(s) shall stop any and all such work until specifically authorized or released by the building official to proceed herewith.

(6) Authority to Disconnect Utilities in Emergencies. The building official or the building official's authorized deputy shall have the authority to disconnect fuel-gas utility service, and/or other energy supplies to a building, structure, premises or equipment regulated by this code when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or premises of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building, structure or premises in writing of such disconnection within 24 hours thereafter.

(7) Authority to Abate Hazardous Equipment. When the building official ascertains that equipment, or any portion thereof, regulated by this code has become or is hazardous to life, health or property, the building official shall order the equipment either removed from its location or restored to a safe and/or sanitary condition, as appropriate. The notice shall be in writing and contain a fixed time limit for compliance. Persons shall not use the equipment after receiving said notice, until authorized to do so by the building official. When equipment (or an installation) is to be disconnected, written notice of the disconnection (and causes therefore) shall be given within 24 hours to the involved utility, the owner and/or occupant of the building, structure or premises. When equipment is used or maintained in violation of this code and in violation of a notice issued pursuant to the provisions of this section,

the building official may institute such action as he/she deems necessary to prevent, restrain, correct or abate said use or maintenance.

(8) Connection after Order to Disconnect. No person shall make a connection to or from an energy, fuel or power supply to any equipment regulated by this code which has been disconnected or ordered disconnected or discontinued by the building official until the building official specifically authorized the reconnection and/or use of such equipment.

(9) Maintenance. All buildings and structures, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this section, the building official may cause a structure to be reinspected.

(10) Occupancy Violations. Whenever any building, structure or equipment therein regulated by this code is used contrary to the provisions of this code, the building official may order such use discontinued and the structure (or portion thereof) vacated. All persons using the structure (or portion thereof) shall discontinue the use within the time prescribed by the building official in his

notice and make the structure, or portion thereof, comply with the requirements of this code.

### **8.045 Appeals.**

(1) Board of Appeals. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the city of Lafayette. The building official shall be an ex officio member of and shall

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act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official. The board of appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements imposed by this code.

(2) Appeal Procedure. Any decision relating to the suitability of alternate materials and methods of construction or interpretation by the building official with regard to the building code may be appealed to the board of appeals in conformance with procedures provided herein.

### **8.050 Plans and Permits.**

(1) Issuance. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other Lafayette departments to verify compliance with any applicable laws under their jurisdiction. If the building finds that the work described in application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees have been paid, the building official shall issue a permit therefore to the applicant. When the building official issues the permit where plans are required, the building official shall enforce in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans. The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or

structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be granted.

(2) Retention of Plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein, and one set of approved plans and specifications shall be returned to the applicant, with said set being kept at the site of the building or work at all times during which the work authorized thereby is in progress.

(3) Validity of Permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction or any other federal, state, or local law, statute, rule, regulation, or ordinance. The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or any other ordinances of the city of Lafayette.

(4) Expiration of Plan Reviews. Applications for which no permit is issued within 180 days following the date of the application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an applica-

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tion after expiration, the applicant shall resubmit plans and pay a new plan review fee.

(5) Permit Expiration, Extension and Reinstatement. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building and or work authorized is not commenced within the time limitations set forth in this section. Every permit issued by the building official shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the building official to indicate the intent to start and complete the project. The building official may require the permittee to document these activities. Every permit issued by the building official shall expire by limitation and become null and void 24 months after the date of permit issuance.

If the building or work authorized by such permit has not received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished. EXCEPTION:

At the time of permit issuance, the building official may approve a period exceeding 24 months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within 24 months unreasonable. Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days or written request by the permittee showing that circumstances beyond the

control of the permittee have prevented work from being completed. No permit shall be extended more than once. When a permit has expired, the permit can be reinstated and the work authorized by the original permit can be recommenced, provided the following are met:

(a) The building code under which the original permit was issued and other laws which are enforced by the code enforcement agency have not been amended in any manner which affects the work authorized by the original permit.

(b) No changes have been made or will be made in the original plans and specifications for such work.

(c) The original permit expired less than one year from the request to reinstate.

The fee for a reinstated permit shall be one-half the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, shall be required.

(6) Work Without a Permit/Investigation Fees. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, may be collected whether or not a permit is then or subsequently issued. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

(7) Not Transferable. A permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder.

(8) Suspension/Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error on the basis of incorrect information supplied, or if its

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issuance (or activity thereunder) is in violation of any ordinance or regulation of any other provisions of the city code.

(9) Inspections. It shall be the duty of the permit holder or authorized agent to request all inspections that may be necessary or otherwise required in a timely manner, provide access to the site, and to provide all equipment as may be deemed necessary or appropriate by the building official. The permit holder shall not proceed with construction activity until authorized to do so by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expenses incurred by the permit holder to remove or replace any material requested for proper inspection shall be the responsibility of the permit holder or his agent. Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has posted or otherwise made available an inspection record card such as to allow the building official to conveniently make the required entries thereon regarding inspection of the work. This card shall be maintained available by the permit holder under final approval has been granted by the building official.

### BUILDING CODE STANDARDS

#### 8.055 Structural code

(1) Enforcement of State Code. The Oregon Structural Specialty Code, as adopted by OAR 918-460-0010 through 918-460-0015, except as modified in this code, is enforced as part of this code.

(2) Adoption of Fire Flow Requirements. Appendix Chapter 9 Division II of the 1996 edition of the Oregon Structural Specialty Code is adopted as part of this code with the following modifications:

910.1 Decreases. Fire-flow requirements may be modified downward by joint

approval of the building official and the Chief of the Fire Department.

910.2 Increases. Fire-flow requirements may be modified upward by joint approval of the building official the fire chief where conditions indicated an unusual susceptibility to group fires or conflagrations. An upward modification shall not be more than twice that required for the building under construction.

910.4 Required Fire Flow. No building shall be constructed, altered, enlarged, or repaired in a manner that by reason of size, type of construction, number of stories, occupancy, or any combination thereof creates a need for a fire flow in excess of 3000 gallons per minute (1.14 m/min) at 20 pounds per square inch residual pressure, or exceeds the available fire flow at the site of the structure, whichever is less.

912.4.1 Fire Flow. Fire flow requirements in excess of 3000 gallons per minute (1.14 m/min) for buildings protected with automatic sprinkler systems may be allowed by the building official and the fire chief when:

(a) the greater flow is made available at the building site through the existing city water distribution system; and

(b) vehicle access as specified in Section 902.2.2 of the Uniform Fire Code is provided to all sides of the building.

(3) Excavation and Grading/Erosion Control. Appendix Chapter 33 of the Uniform building code, 1994 Edition, published by the ICBO, except Tables 33-1 and 33-B, is adopted as part of this code.

#### 8.060 Mechanical Code.

(1) Enforcement of state code. The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 through 918-440-0040, is enforced as part of this code.

(2) Process piping. Appendix Chapter 14 of the Uniform Mechanical Code, 1994 Edition, published by the International Conference of

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building officials, except as modified in the following paragraph, is adopted as part of this code.

Section 1401 of this Appendix chapter is modified to read as follows: The regulations of this chapter shall govern the installation of hazardous process piping in or in conjunction with a building or structure or located upon the premises.

### **8.065 Plumbing Code.**

(1) Enforcement of State Code. The Oregon Plumbing Specialty Code, as adopted by 918-750-0010, is enforced as part of this code.

### **8.070 One and Two Family Dwelling Code.**

(1) Enforcement of State Code. The Oregon One and Two Family Dwelling Specialty Code, as adopted by OAR 918-600-0005 through 918-600-0110, are enforced as part of this code.

### **8.075 Manufactured Home Installations.**

(1) Enforcement of State Rules. The manufactured dwelling rules adopted by OAR 918-500-0000 through 918-500-0500 and OAR 918-520-0010 through 918-520-0020, are enforced as part of this code.

### **8.080 Recreational Park and Organizational Camp Regulations.**

(1) Enforcement of State Rules. The recreational park and organizational camp rules adopted by OAR 918-650-0000 through 918-650-0085, are enforced as part of this code.

### **8.085 Dangerous Building Code.**

(1) Unsafe buildings. All buildings or structures regulated by this code which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this section, unsafe. Any use of buildings or structures constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for

the purpose of this section, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in this code, are hereby designated as unsafe building appendages. All such unsafe buildings, structures or appendages are hereby declared to be public nuisances and shall be abated by re-

pair, rehabilitation, demolition or removal in accordance with the procedures set forth in the Dangerous Building Code or such alternate procedures as may have been or as may be adopted by the city of Lafayette. As an alternative, the building official, or another employee or official of the city of Lafayette, as designated by the governing body, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

(2) Adoption of the Uniform Code for the Abatement of Dangerous Buildings. The 1997 "Uniform Code for the Abatement of Dangerous Buildings" is hereby adopted.  
*[Revised by Ord 545 on March 28, 2002]*

### **8.090 Fees**

Fees charged under this code shall be as follows: Those fees adopted by Yamhill County or, when and if the city of Lafayette assumes responsibility for the enforcement of the requirements of this chapter, the fees adopted by city resolution. The building official may authorize the refunding of fees paid in accordance with the refund policy in effect in the jurisdiction. The determination of value or valuation under any provisions of this code shall be made by the building official. The value to be used in computing the building permit and plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-exting-

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uishing systems and any other permanent equipment.

**8.095 Severability.** If any section, paragraph, subdivision, clause, sentence, or provisions of this code shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this code, but the effect thereof shall be confined to the section, paragraph,

subdivision, clause, sentence, or provision immediately involved in the controversy in which judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this code notwithstanding the parts to be declared unconstitutional and in valid.

**8.100 Penalties.** Any person violating any of the provisions herein for which a special penalty has not been expressly provided shall, upon conviction thereof, be punished by a fine not to exceed \$1000 per violation. Each day that a violation exists is a separate offense.

### **8.105 Building Permittee Responsible for Cleanup.**

(1) Before a building permit shall be issued for the construction of any new single-family, multi-family, commercial or industrial building or structure, the remodeling of any existing single-family, multi-family, commercial or industrial building or structure, the estimated cost of which remodeling exceeds the sum of \$10,000, the applicant shall enter into an agreement with the City which shall provide that the applicant for a building permit shall agree that he/she will be solely responsible for the cleanup of debris, dirt, and foreign materials, on sidewalks and roadways, derived from the building site and/or lot upon which the building or structure which is the subject of the building permit is being constructed or remodeled. This responsibility shall continue until such time as the structure receives

final city inspection and approved, including issuance of an occupancy permit if the same is required for the subject building or structure.

(2) The applicant shall be responsible for cleaning all debris, dirt and foreign material derived from his/her development or project by five p.m. of each work day; except that if said debris, dirt, or foreign material is found by the city administrator to constitute an immediate traffic or safety hazard, it shall be immediately removed by the applicant.

(3) The applicant shall furnish the city with information as to where he or a designated subordinate may be reached at all times by the city in regard to the performance of such cleanup work. Failure of the land divider to clean up debris, dirt or foreign materials as hereinabove stated shall give the city the right to clean up said debris, dirt or foreign materials utilizing city crews or hire an independent contractor to do the same.

(4) The city shall bill the applicant for all such cleanup services at the rate to twice the actual city labor costs incurred plus 35 percent of such actual labor costs reflecting utilization of city equipment.

(5) In the event that the city hires a private contractor to perform the services, the city shall bill the applicant the actual costs incurred by the private contractor plus 50 percent of said actual costs reflecting the administrative costs incurred. All billings shall be paid by the applicant within five days of the billing date. Failure of the applicant to pay said billings within said time shall result in issuance of a stop work order on the entire building project which shall remain in effect until the required sums are paid by the applicant.

**8.110 Cleanup Deposit.** In the event there are three or more occasions within a calendar year when the city is forced to clean up debris, dirt or foreign material on sidewalks or roadways from an individual building site, the applicant for the building permit shall deposit with the city a sum

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in an amount set by council resolution which shall be retained by the city as a fund to utilize for street-cleaning purposes pursuant to the provisions of sections 8.000 to 8.115. Failure of the building permit applicant to maintain said sum for a period of over ten days shall result in the issuance of a stop-work order, which shall remain in effect until the fund is restored by the applicant for the building permit.

**8.115 Prevention of Debris Accumulation on Adjacent Sites.** Before a building permit shall be issued for the purposes set forth in Section 8.110, the applicant for the building permit shall agree that, if required by the city, he/she will deposit rock and gravel to the specifications of the city in such locations and quantity adjacent to and on the building site so as to help prevent the deposit of debris, dirt, or other foreign material from the building site upon adjacent sidewalks and roadways.

### FIRE CODE

**8.175 Code Adopted.** For the purposes of prescribing regulations and governing conditions hazard to life and property from fire or explosion, the Uniform Fire Code, as adopted by the state of Oregon, is adopted in its entirety as though it were fully and completely set out in this section.

**8.176 Purpose.** The purpose of the Lafayette fire department shall be the prevention and suppression of fire to protect life and property within the Lafayette city limits and, as resources allow, to provide mutual aid to other fire departments outside the Lafayette city limits.

#### **8.177 Officers.**

(1) The chief and assistant chief of the fire department shall be elected annually by the membership of the fire department, and submitted to the city council or approval at its first regular session in February. In the event that the membership of the fire department and city council

cannot agree on the individuals to be chief and assistant chief, the city council shall appoint the chief and assistant chief. The city council retains the authority to replace the individuals serving as chief and assistant chief by appointment during the year.

(2) The fire chief shall present a written and verbal report of monthly activities (and any additional information requested by the city council) to the city council at its first regular session each month, shall maintain records of fires, false reports of fires, training, membership, inspections of equipment and inventory of equipment, and shall submit an annual written equipment inventory to city council during the month of March.

(3) The assistant chief shall perform the duties of chief when the chief cannot perform them.

(4) Regulations pertaining to operation of the fire department shall be adopted by city council in the form of resolutions.

#### **8.180 “Knox Box” Required.**

All commercial and industrial properties and all school buildings shall be equipped with a “Knox Box” and said box shall be located in accordance with plans approved by the city of Lafayette. The city shall be provided with a key to said box.

### MOVING BUILDINGS

**8.200 Permit Required.** It is unlawful for any person, firm or corporation to move any building or structure upon, over, or along with any public street, alley or highway within the city without first obtaining a permit from the city engineer. The provisions of sections 8.200 to 8.255 shall not apply to the moving or hauling of any building or structure loaded upon a truck when such building or structure is of a size and weight not exceeding the maximum width, length, height, or weight of a truck load that may be lawfully

moved over a public highway without a special permit from the Oregon Department of Transportation or any other public authority.

**8.205 Building Classes.** For the purpose of sections 8.200 to 8.255, buildings and structures to which the provisions herein are applicable shall be separated into three classes, namely:

(1) Class One. Frame buildings only, having an overall width not exceeding 14 feet and an overall length not exceeding 22 feet, when moved as a load upon a motor truck;

(2) Class Two. Frame buildings only, having an overall width at least two feet less than the width of the most narrow street, measured from curb to curb, along the route over which any such building or structure is to be moved, the moving of which will be done on pneumatic dollies; and

(3) Class Three. All buildings or structures for the moving of which a permit is required, and not included in Classes One and Two, having an overall width of at least two feet less than the width of the most narrow street, measured from curb to curb, along the route over which any such building or structure is to be moved.

**8.210 Permit Application--Contents.**

(1) Application for a permit to move any building or structure upon, over, or along any public street, alley, or highway shall be made in writing at the office of the city engineer upon a form provided by the engineer. The application, which shall be signed by the owner of the building or structure to be moved or by the person, firm, or corporation engaged to move the same, shall contain the following information:

(a) The name and address of the owner of the building or structure;

(b) The location of the building before moving;

(c) The location where the building is proposed to be set or reestablished;

(d) The type, age, width, length, and height of the building;

(e) The use or purpose for which the building was designed;

(f) The use or occupancy to be made of the building at its new location;

(g) The name and address of the person, firm, or corporation engaged to move the building;

(h) The means or manner the building is to be moved and type of equipment used therefore;

(i) The route over or along which the buildings are to be moved;

(j) The time that will be required to move the building including the day and hour when any part thereof will enter any street and the approximate date and hour every part of the building will be off of every street, alley, or highway, and the time that will be required to complete the reestablishment and relocation of the building upon its new site; and

(k) Such other information as the city engineer may deem necessary.

(2) Where the building is to be moved outside of the corporate limits of the city the information required by subsections (1)(e) and (1)(f) of this section need not be given.

(3) Except as to Class One buildings, less than fourteen feet in height, there shall be attached to the application signed written statements from each person, firm, or corporation owning or operating any public utility maintaining any wires, conduits, cables, poles, or other appliances, or appurtenances thereto, along, over, or across any street, alley, or highway along the route over which the building or structure is to be moved by or for the applicant, which statements shall state or set forth that the moving of such building will not molest, damage, or interfere with, or interrupt the service of, any such wires, conduits, cables, poles, or other appliances, or appurtenances or that the applicant has made ap-

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propriate arrangements for clearing the same at the time the building is to be moved.

(4) Any such application shall also contain a statement or agreement to the effect that the applicant will not damage any real or personal property upon, along, or adjacent to any street, alley, or highway while moving any building and that in case any damage is so caused, that the applicant will pay therefor.

(5) The application for the moving of a building shall be accompanied by plans and specifications drawn upon substantial paper which shall indicate the nature and extent of the exterior work proposed in connection with the relocation and reestablishment of the building, and such other data as may be required by the city engineer.

**8.215 Application Approval.** No permit shall be issued by the city engineer until the application therefor is approved by the chief of police, the building inspector, the city engineer, and, in case of Class Three buildings, and houses or buildings of any class moved within or into the most restricted residential district as such districts are classified by the Lafayette zoning ordinance, by the city council, and will not then unless the person, firm, or corporation who will move the building has furnished a bond or insurance as provided in sections 8.100 to 8.155.

**8.220 Safety Considerations.** The chief of police shall consider the probable effect of the proposed moving on the public safety, and he shall not approve the application for moving permit except where such moving will not jeopardize the public safety and the route proposed to be followed is the one least dangerous to the citizens of the city and the general public.

**8.225 Inspection of Building.** The building inspector shall inspect the building to be moved, and, if he finds that the building is of substantial construction and in condition that it may be moved without collapsing or falling apart and

without endangering any person upon, along, or adjacent to any public street, and further finds that the building is designed and adaptable for the purpose, use or occupancy to which it is proposed to put the same at the new location and that it conforms to the requirements of the fire zone of the new location, then he shall approve the application.

**8.230 Engineering Considerations.** The city engineer, before approving an application for a permit to move any building or structure, shall determine the size and dimensions of the building, and shall not approve an application for the moving of any building of a greater size than permitted under sections 8.100 to 8.155. The city engineer shall further determine that the mover has safe and sufficient equipment and facilities for moving the building or structure within the time allowed by the engineer for such moving, and that the mover has sufficient and adequate barricades, lights, flags and personnel for warning the public both day and night, and for the safe direction of traffic and that the streets and the bridges in the streets, along the route to be traversed by the moving are of sufficient width and strength and in condition to bear the moving of the building or structure described in the application, and that such moving will not endanger any trees, shrubs, or improvements in, upon, or adjacent to any street. In addition to the matters in this section enumerated, the engineer shall require compliance of all provisions of sections 8.100 to 8.155 which are a prerequisite to the granting of a moving permit.

**8.235 Insurance.** No permit to move a building or structure shall be granted unless the movers shall furnish a certificate of public liability insurance which shall be approved by the city attorney as follows:

(1) For the moving of a building or structure in Classes One, Two or Three as hereinabove set forth, the mover shall furnish a certificate of public liability insurance with the follow-

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ing coverage limits: \$500,000 property damage, \$100,000 personal injury for any one person, and \$500,000 personal injury for any one occurrence. Said certificate shall provide that the mover shall be responsible for any injuries or for the death of any person or persons and any damage to any property or any person, and damages to streets, bridges, and other public property owned or maintained by the city, or any other public corporation, on account or by reason of any of the operations of the mover while engaged in the moving of any building or structure, including injuries or damages occasioned by the falling or collapsing of, or the weight of, or collisions with any such building or structure.

(2) Before issuing any permit, the city administrator shall also require the owner of the building to provide a bond or cash security in an amount approved by the city engineer to be filed in the office of the city administrator, and to be conditioned that in the relocation and the reestablishment of any building that is moved, the principal will make and complete such relocation and reestablishment in accordance with the plans and specifications submitted with the application, as provided in section 8.110, and in substantial accordance with the regulations and provisions contained in sections 8.100 to 8.155 or any other ordinance of the city, and that in case the principal fails to do so, make and complete such relocation and reestablishment, then the surety upon such bond will be liable to the city and have cash security to be deposited in lieu of a surety bond, then the council may forfeit all or a portion of such deposit in case the applicant or owner of the building fails to complete the relocation thereof in accordance with the plans and specifications set forth.

**8.240 Unlawful to Leave Building on Streets.** After a building or any part thereof extends over or into or is upon any part of any street, alley, or highway, by virtue of the moving thereof, the person, firm, or corporation moving the same shall diligently and continuously em-

ploy himself, his, their or its agents, employees and facilities in the moving of such building until the same reaches its destination, or is removed from any and all streets, alleys, or highways, and, except when the mover shall have the permission of the city engineer, it is unlawful for any such mover to leave standing or abandon the moving of such building while the same or any part thereof is in or upon any part of any street, alley, or highway.

**8.245 Presence of Engineer.** The city engineer, or his deputy or such inspector or inspectors as the engineer may designate, shall be present and about any building or structure being moved at all times the same is within any street.

**8.250 Moving at Night.** In case any building is moved at night, the mover shall provide such barricades, lights, flares, and watchmen as may be necessary to safeguard the traffic and persons using the street.

**8.255 Permit Fees.** When application is made for a permit under sections 8.100 to 8.155, the applicant shall pay permit fees in an amount set by council resolution.

### HOUSE NUMBERING

**8.275 Structures to be Numbered.** The city shall be laid out into certain areas, and structures within these areas shall be given numbers as a means of facilitating identification of said structures.

**8.280 Map on File.** There shall be on file with the city administrator a map or similar means of furnishing to applicants who reside within the city limits of Lafayette a "house number" and said number is to be the identification for a structure at a certain location on a street.

**8.285 House Numbers--Furnished by City Administrator.** House numbers shall be fur-

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nished to applicants by the city administrator free of any cost to the applicant.

**8.290 House Numbers--Definition.** By "house numbers", it shall be understood to be an identification only that is given to the applicant.

**8.295 Posting Numbers Required.** All residential, commercial, and industrial structures for which a house number has been designated by the city, shall bear upon the front thereof or upon a post or standard at or near the street, house numbers which are clearly legible from the street. House number designations in Roman numerals shall be prohibited. No new residential, commercial, or industrial structure may be issued an occupancy permit by the city without complying with this section. Upon issuance of a building permit for the new construction of a structure which will require marking by permanent house number after the completion thereof, there shall be posted upon the premises or upon a post or standard near the street, temporary house numbers clearly legible from the street.

### FENCE REGULATIONS

**8.300 Barbwire and Electric Fences Prohibited.** No person, firm or corporation shall erect, construct, or maintain any barbwire or electric fence within the city unless the requirements of section 8.310 are met, or unless it is erected with the purpose of containing livestock upon a lot of a minimum of one acre in area; provided further, that in said one acre lot at least 20,000 square feet must be present per head of livestock. In addition to the above requirements, no barbwire or electric fence may be erected, constructed, or maintained within five feet of the right-of-way of any public street, alley, pedestrian way, bike way, hiking trail, or other public way; and further provided, that no such fence may be located within 100 feet of a residence other than a dwelling upon the same lot, except that an elec-

tric fence may be located within 100 feet of a residence other than a dwelling upon the same lot if the requirements of section 8.210 are met.

**8.305 Existing Electric & Barbwire Fences.** The owner, occupant, or custodian of the premises upon which there is situated a barbwire or electric fence existing on the effective date of the ordinance codified in sections 8.300 to 8.315 which is in violation of the requirements set forth herein, shall be notified by the city administrator by certified or registered mail of the existence of said violation. The notice shall provide that such existing fence must be removed within 30 days of receipt of said notice. Failure to remove a violating barbwire or electric fence within said 30-day period shall constitute a violation of sections 8.300 to 8.315.

**8.310 Exception Procedure for Electric & Barbwire Fences.** The city administrator shall have the authority to authorize issuance of permits for the erection, construction, or maintenance of electric fences other than electric fences for the containment of livestock as set forth in section 8.300 if he finds that all of the following requirements are met:

(1) That the electric fence is located within an entirely fenced and/or enclosed area in which appropriate and suitable measures have been taken to render the area secure from children other than children of the owners, occupants, or custodians of the premises.

(2) That the electric fence shall be utilized for the sole purpose of preventing damage to property of the owner, occupant or custodian of the premises by wild animals, such as raccoons, opossums, or deer. Substantial evidence of the presence of a threat of such damage and that there are no other reasonable methods of control must be established to the satisfaction of the city administrator.

(3) Appeal of any decision of the city administrator pursuant to the terms of sections 8.300 to 8.315 may be made by any interested

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party to the city council within 15 days of the date of the city administrator's decision.

**8.315 Permit Required for all Fences.** Prior to erecting or constructing fence within the city limits, including, but not limited to, any barbwire or electric fence pursuant to sections 8.300 or 8.310, the person, firm or corporation erecting such fence or desiring to erect the same shall first obtain a permit from the city. The application for such permit shall be accompanied by an accurate scale drawing which shall indicate the height of the fence and the location of such fence with reference to any public way, property line and structure. The application shall also describe in detail all materials from which the fence will be constructed. No fee shall be charged for such a permit.

**8.320 Materials permitted.** Fences shall be constructed of wood, stone or masonry products or such other man made materials designed, and intended by the manufacturer for use as a fence.

**8.325 Compliance with Development Code & Design Standards.** Reference should be made to the Lafayette Development code (Ordinance No. 470) and the Lafayette Public Works Design Standards (Ordinance No. 483). Design and construction of any fence in the city shall be in compliance with the set back requirements, clear vision requirements, height restrictions, and such other provisions as may apply to a particular fence application.

**8.330 Non-Compliance as Continuing Offense.** Any person who fails or refuses to obtain a fence permit before beginning construction of a fence, or who fails or refuses to bring any fence into compliance with the provisions of sections 8.300 to 8.235 of this code, the Lafayette Development Code (Ordinance No. 470), or the Lafayette Public Works Design Standards (Ordinance

No. 483), commits a separate violation for each day that such failure or refusal continues.

## STREET TREES

**8.400 Purpose.** The purpose of sections 8.400 to 8.495 is to maintain and protect the aesthetic quality of the city's residential and business environment and to establish a process and standards which will minimize uncontrolled cutting or destruction of trees or wooded areas within Lafayette. It is the intent of sections 8.400 to 8.495 to protect the scenic beauty and livability of the city by promoting a process for preserving and/or renewing its tree canopy and by implementing standards for the planting, maintenance and survival of desirable trees. Sections 8.400 to 8.495 also recognizes the value of the urban forest for its effect on air quality and wildlife habitat, and as a noise barrier and visual contrast to the developed urban environment.

**8.405 Definitions.** As used in sections 8.400 to 8.495, singular includes the plural and vice versa, and the following mean:

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

**Heritage tree.** Trees which, because of their age, type, notability or historical association, are of special importance.

**Illegally removed tree.** A tree removed without first obtaining the permit, when the act of removal is not excepted by section 8.455(4).

**Street.** Includes land within the dedicated public right-of-way including easements, sidewalks, etc.

**Street tree.** Includes any plant listed in the approved street tree list as identified within the street inventory which is updated regularly by the city.

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Subject property. The land on which the trees are located or were cut, and any adjacent land under the same ownership.

Tree. A living, standing woody plant having a trunk 6" in diameter or 19" in circumference at a point five feet above the mean ground level at the base of the trunk.

### **8.410 Street Tree Plan and List of Trees.**

(1) It is in the best interest of the city that a Street Tree Plan be developed and established for the planting, maintenance and replacement of trees in and along its streets. This section is adopted for the purpose of providing for such a plan and for the establishment of regulations necessary to carry out its purpose.

(2) The city administrator shall prepare or cause to be prepared a Street Tree Plan for the planting and maintenance of trees in the streets of the city.

(3) The Street Tree Plan should include, but shall not be limited to, a series of maps of city streets upon which is designated a scheme for the planting of trees and the designation of streets for certain types of trees. Such maps shall show the interval between existing trees and the place where each new tree is to be planted.

(4) A survey of the street trees presently existing in the city and their condition may be taken.

(5) Approval and amendments of the Street Tree Plan shall be based on consideration of the following criteria:

(a) Existing and planned street width.

(b) Existing and planned utilities.

(c) Pedestrian and vehicular traffic.

(d) Proposed trees are included in the city administrator's listing of approved species.

(6) The city administrator shall maintain a list of approved varieties of trees that may be planted on any street with the city in accordance with the Street Tree Plan. Approval shall be based upon considerations such as maturity,

height, susceptibility to disease or pests, reasonable expected freedom from nuisance characteristics and general suitability for any particular locations. The city administrator's listing of approved varieties shall not prevent the seeking of approval of unlisted varieties.

### **8.415 Gifts and Funding.**

(1) The city may accept gifts which are specifically designated for the purpose of planting or maintaining street trees within the city.

(2) A separate fund shall be established and maintained for revenues and expenditures created by the street tree program.

### **8.420 Planting.**

(1) The city administrator may plant street trees along the streets of the city in accordance with the Street Tree Plan. Until such time as a Street Tree Plan for the planting and maintenance of street trees is developed, street tree plantings shall conform to the city's Street Tree Planting Guidelines, which may be obtained from the parks and recreation department.

(2) It shall be unlawful for any person to plant or set out any tree or authorize or cause or procure any person to plant or set out any tree in or upon any part of any street or public right-of-way without:

(a) Obtaining from the manager a written permit to do so; and

(b) Complying in all respects with the conditions set forth in such written permit and with the provisions of this code.

(3) All applications for such permit shall describe work to be done and the variety, size and precise location of each tree to be planted. Upon review of the application:

(a) If the city administrator has found that the proposed planting is in accord with the Street Tree Plan, the city administrator shall grant a permit, and the trees shall become part of the city's street tree inventory.

(b) If the city administrator finds that the proposed planting is not in accord with the

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Street Tree Plan, but that the trees proposed to be planted have a reasonable likelihood of prospering and the application specifies the location, variety and grade of each tree and method of planting, including among other things, the supplying of suitable soil, then the city administrator may grant a permit, and the tree shall become part of the city's street tree inventory.

(4) The permit shall be good only for the planting season stated.

### **8.425 Plantings in New Subdivision.**

(1) Street trees shall be planted by the city within the planting strips of any new subdivision in conformity with the Street Tree Plan for the area. All such planting shall be done in accordance with the planting specifications governing the placement of street trees as provided by the Parks and Recreation Department. All trees shall be planted during the first planting season after occupancy.

(2) The cost of street trees shall be paid by the developer of the subdivision based upon the number of street trees required within the approved plan multiplied by the fee per street tree as established by the city by resolution.

(3) The fee per street tree, as established by the city, shall be based upon the city's estimate or the total of the following:

- (a) The cost of the tree;
- (b) Labor and equipment for original placement;
- (c) Regular maintenance necessary for tree establishment during the initial two year period following the city schedule of maintenance; and
- (d) A two-year replacement warranty based on the city's established failure rate.

**8.430 Modified and New Streets.** All proposed changes in width in a public street right-of-way, or any proposed street improvement shall, where feasible, include allowances for planting strips. Plans and specifications for planting such

areas shall be integrated into the general plan of street improvements. Sections 8.400 to 8.495 requires any multi-family, commercial or public facility which causes change in public right-of-way or street improvement to comply with the street tree planting plan and standards.

### **8.435 Protection of Street Trees.**

(1) It shall be unlawful for any person to attach or keep attached to any tree in or upon any public street or to the guard or take intended for the protection of such tree, any ropes, wires, chains, or other device whatsoever, except that the same may be attached to any tree as support or protection thereof.

(2) During the erection, repair, alteration or removal of any buildings or structure, it shall be unlawful for the person in charge of such erection, repair, alteration or removal to leave any tree in or upon any street in the vicinity of such building or structure without a good and sufficient guard or protector as to prevent injury to such tree arising out of, or by reason of such erection, repair, alteration or removal.

### **8.440 Permit Requirements and Conditions.**

Any person desiring for any purpose to cut, prune, or treat any street tree, shall make application to the city administrator on forms furnished by the city. Such application must state the number and kind of trees to be pruned or treated, the name of permittee and/or contractor, and the time by which the proposed work is to be done and such other information as may be required by the city administrator. Any work done under such written permit must be performed in strict accordance with the terms and provisions of this ordinance. In issuing or denying a permit, the city administrator shall apply all the standards as set forth in this ordinance and the objectives of the Street Tree Plan.

### **8.445 Maintenance.**

(1) All street trees must be pruned to National Arborist Association (NAA) Pruning

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Standards for Shade Trees. A current copy of said standards shall be available for review at the parks and recreation department.

(2) Street trees or trees on private grounds and having branches projecting into the street shall be pruned by the owners of the property upon which the trees are growing and shall be done according to the requirements for tree branch clearance over street and sidewalk areas, and signs as set forth in sections 8.400 to 8.495.

(3) Limbs of trees may be allowed to project over the sidewalk area at an elevation of not less than 7 1/2 feet above the sidewalk level, and over the street area at an elevation of not less than 11 feet above the street level. However, on any street designated as an arterial or one-way street, and where parking has been prohibited, limbs of trees shall be pruned to a height of not less than 14 feet above the street level. Trees which are not trimmed so as to meet the above specifications shall be deemed to present an unreasonable risk of harm to persons or property.

(4) Care and maintenance of street trees or trees planted by the property owner or former property owner on public right-of-way is the continuing duty and routine obligation of the property owner(s).

(5) Whenever the owner or owners, lessees, occupants or persons in charge of private grounds shall neglect or refuse to prune any tree as provided in this section, said tree may be declared a nuisance pursuant to sections 5.400 to 5.530 of this code and the city administrator may prune or treat, or cause to be pruned or treated, said tree. The person remedying the condition shall be authorized to enter the premises for that purpose. The nuisance abatement provisions of sections 5.400 to 5.530 shall be followed for the collection of costs incurred by the city in abating the nuisance.

(6) The city administrator may prune and maintain, or cause to be pruned and maintained, all of the trees within the street.

(7) A private utility maintaining its utility system in a street may prune or cause to be

pruned in accordance with said permit, any tree located in the street which interferes with any light, pole, wire, cable, appliance or apparatus used in connection with, or as a part of, the utility system.

(8) It shall be unlawful for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from sections 8.400 to 8.495 by the city administrator.

(9) It shall be unlawful for any person to engage in the business occupation or profession of tree pruning within the corporate limits of the city of Lafayette without first obtaining a business license therefore as provided in sections 7.000 to 7.080 of this code.

(10) If sections 8.400 to 8.495 impose an undue hardship on an individual property owner, assistance by a grant-in-aid may be available through the city administrator's office pursuant to the city's Grant-In-Aid Policy.

### **8.450 Abatement.**

(1) When any tree located on a street or on private property is dead or infested with a disease or insects or is, in the opinion of the city administrator, infectious and may spread such disease or insects to other trees in the city, the manager may remove or treat the tree or cause same to be removed or treated. Such removal or treatment shall be the responsibility of the property owner. Dead trees may also be abated or removed pursuant to section 5.465(2) of this code.

(2) The city administrator may abate or remove, or cause to be abated or removed, any tree located in the street area, or which encroaches from private property into the street area

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because of age, disease or other debilitating cause, death, insecure root system, or any other condition which, in the opinion of the city administrator, causes its continued existence to be detrimental to the public interest. The manager may require that the removed tree be replaced with a new tree at the expense of the property owner.

### 8.455 Removal.

(1) It shall be unlawful for any person, without a prior written permit from the city administrator, to remove, destroy, cut, break or injure any street tree, or to remove, except as provided in sections 8.400 to 8.495 any street tree that is planted or growing in or upon any street, or cause or authorize or procure any person to do so; or injure, misuse or remove any device set for the protection of any street tree in or upon any street.

(2) The approval of a street tree removal by the city administrator may be conditioned on the replacement with a new street tree of approved variety if the city administrator finds the replacement necessary to maintain an ornamental street tree system on the street, block or portion thereof. If approval by the city administrator is so conditioned, the tree removal permit shall contain such condition along with a time frame for compliance. Costs of replacement are the responsibility of the property owner.

(3) The provisions of this section apply to all zones and uses on private property within the city limits of Lafayette, unless excepted by subsection (4) of this section.

(4) The following activities do not require a tree-cutting permit under the provisions of this section:

(a) In case of an emergency caused by a tree being in a hazardous or dangerous condition threatening life or property, such tree may be removed by permission of any officer of the police department or fire district, or the city administrator.

(b) The action of any city officer or employee, or of any public utility necessary to remove or alleviate an immediate danger to life or property, to restore or protect utility service, or to reopen a public thoroughfare to traffic.

(c) The felling or removing of trees that are nuisances under section 5.465 of this code.

(d) Felling or removing of trees that are interfering with sewer service.

(e) Felling or removing of trees that obstruct the view at an intersection contrary to requirements contained in chapter 42 of the Community Development code.

(f) The felling of trees on a single parcel of land or contiguous parcels of property under the same ownership when a parcel or parcels total less than 10,000 square feet.

(g) Tree cutting within 50 feet of a building or structure which is lawfully present and which may be lawfully used under the ordinances of the city, will not require a tree-cutting permit.

(h) The felling of not more than two trees on a single parcel of land or contiguous parcels of property under the same ownership totalling over 10,000 square feet within a single calendar year.

(i) The felling of trees within the grading envelope for new streets and utilities based upon an approved preliminary plat and grading plan.

(j) The felling of trees within the building envelope including driveways for individual lots with an approved building permit. In order to avoid delay, prior to issuing an approved building permit, the Department of Planning and Development may approve a preliminary site plan for purposes of tree removal only.

(k) Harvesting of Christmas trees on land used solely for the production of cultured Christmas trees as defined in ORS 215.203(3).

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(l) The felling of trees consistent with any approved site plan or conditions which allow for the removal of trees will not require a permit for the removal of those trees as specified in the plan or conditions.

(5) (a) An application for a tree cutting permit shall be initiated by the property owner or authorized agent, and shall be accompanied by the appropriate fee. In the event this section imposes a hardship on an individual property owner, assistance by a grant-in-aid may be available through the city administrator's office pursuant to the city Grant-In-Aid Policy.

(b) The application may include a map of the parcel indicating the species or other description of the trees proposed for removal and their location. The map may be accompanied by a narrative which explains the reason or reasons why the owner or owner's agent wishes to fell the trees. The map shall include sufficient information to adequately review the proposed tree removal including an indication of the tree removal relative to property lines, structures, other trees on the site and other features of the property and adjoining properties.

(6) The city administrator shall make findings with respect to the following criteria when approving, approving with conditions, or denying an application for a tree cutting permit or when requiring tree removal:

(a) The condition of the trees with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular traffic safety;

(b) The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, character of surface waters and streams, and protection of nearby trees and wind breaks.

(c) The necessity to remove trees in order to construct proposed improve-

ments, or to otherwise utilize the applicant's property in a reasonable manner.

(d) The adequacy of the applicant's proposals, if any, to plant new trees to be felled.

(e) That the felling or removal would be compatible with generally accepted practices of horticulture, silviculture, or landscape architecture.

(f) The felling or removal is within the guidelines set forth in the Field Guide to Oregon Forestry Practices Rules, published by the Oregon Department of Forestry, as they apply to the Northwest Oregon region.

(g) That the felling or removal of trees is a right preserved in a timber deed or reservation held by a party other than the property owner.

(h) The trees have been grown for the purpose of harvesting. Evidence of this purpose includes but is not limited to evidence which shows that the trees are:

(i) Grown or growing on land which has been prepared by intensive cultivation methods and which is cleared of competing vegetation; and,

(j) Harvested on a rotating cycle; and,

(k) Subject to agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

(7) The city retains the authority to require the applicant to replace any illegally removed trees pursuant to a plan and time table, and meet any conditions as set forth by the city administrator. No future permits or approvals for any use of the subject property shall be granted without compliance with the plan. Appeal of the replacement plan and its conditions shall be directed to the city council.

**8.460 Stumps.** In addition to the standards of the National Arborist Association, the following

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regulations are hereby established for the care and removal of tree stumps in or upon the public streets of the city:

(1) When trees are cut down, the stump thereof shall be removed to a depth of 18 inches below the surface of the ground or grade of the street, whichever is of greater depth.

### **8.465 Heritage Trees.**

(1) Heritage trees shall be those trees designated by the city council following review of a nomination form submitted by a citizen and accepted by the property owner. Criteria for heritage tree assignation shall be adopted by council resolution.

(2) Upon a tree being designated as a heritage tree, a plaque so designating may be placed upon or near said tree. It shall become the obligation of the Parks and Recreation Department to maintain such tree, and if such tree is upon private property, the city administrator shall notify the owner of such tree that it has been designated as a heritage tree and may thereafter be maintained by the city upon written consent of the property owner. A heritage tree may not be removed without a public hearing at least 30 days prior to the proposed date of removal.

(3) This section is intended to give, and does hereby give full and complete authority to the city administrator over any and all heritage trees in the city upon written consent of private property owners.

### **8.470 Voluntary Compliance and Penalties.**

Any violation of the terms of sections 8.400 to 8.495, its plan or conditions of approval is a Class A infraction. Each calendar day of violation of the terms of sections 8.400 to 8.495, its plan or conditions of approval, is a new offense. In addition, the city attorney shall institute any necessary legal proceedings to enforce the provision of this section. These rights shall be in addition to any other remedies allowed by law. Upon discovery of a violation, the city administrator shall notify the violator of the process available

for voluntary compliance and the penalty provisions of sections 8.400 to 8.495. The city administrator shall offer the violator an opportunity to enter into a voluntary compliance agreement. If the violator fails to enter a voluntary compliance agreement, the violator shall be subject to the penalties and procedures of sections 8.400 to 8.495.

#### (1) Tree Removal.

(a) Voluntary compliance process. A voluntary compliance agreement shall contain the following:

i. A commitment by the violator to submit a carry out a tree replacement program which is approved by the city administrator; and

ii. Payment of a fee in accordance with the city's fee schedule established for this purpose. The fee will be calculated based upon staff time devoted to investigation of the violation and review and approval of the voluntary compliance agreement and related compliance inspections.

(b) Penalties. Any person, firm, or corporation causing the illegal removal of a tree who does not enter into a voluntary compliance agreement may upon conviction be fined a sum not less than \$5000 or not to exceed the equivalent of 3 time the appraised value of the tree based on the latest revision of the Council of Tree and Landscape Appraisers evaluation method plus cost of prosecution including attorney's fees for each tree removed.

#### (2) Street Tree Removal.

(a) Voluntary compliance process. A voluntary compliance agreement shall contain the following:

i. A commitment by the violator to submit and carry out a street tree replacement program which is

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approved by the city administrator;  
and

ii. Payment of a fee in accordance with the city's fee schedule established for this purpose. The fee will be calculated based upon staff time devoted to investigation of the violation and review and approval of the voluntary compliance agreement and related compliance inspections.

(b) Penalties. Any person, firm, or corporation causing the illegal removal of a street tree who does not enter into a voluntary compliance agreement may upon conviction be fined a sum not exceeding the replacement value of the street tree as determined in accordance with the latest revision of the Council of Tree and Landscape Appraisers evaluation method plus cost of prosecution including attorney's fees.

### (3) Violation of Any Other Provision of This Ordinance.

(a) Voluntary compliance process. A voluntary compliance agreement shall contain the following:

i. A commitment by the violator to submit and carry out a corrective program which is approved by the city administrator; and

ii. Payment of a fee in accordance with the city's fee schedule established for this purpose. The fee will be calculated based upon staff time devoted to investigation of the violation and review and approval of the voluntary compliance agreement and related compliance inspections.

(b) Penalties. Any person, firm, or corporation violating any other provision of this ordinance who does not enter into a voluntary compliance agreement may upon conviction be fined a

sum not exceeding \$500 for each violation of this ordinance plus cost of prosecution including attorney's fees.

### **8.475 Nuisances--Abatement Procedures.**

In addition to the procedures for enforcement set forth within this code, the city administrator, in enforcing the provisions of sections 8.400 to 8.495, may proceed against the property on which, or in front of which, a tree is located and found to constitute a nuisance as set forth under the ordinances and code of the city.

### **8.480 Liability.**

Nothing in sections 8.400 to 8.495 shall relieve the owner or occupant of any private property from the duty to keep his private property, sidewalks, planting strip and street trees in front of such private property in a safe condition so as not to be hazardous to public travel nor to relieve said property owner of the obligation to pay the cost of planting, removal and replanting of street trees in the planting strip adjacent to the property of said property owner, or to relieve said property owner of liability to persons injured or otherwise damaged by reason of the property owner's failure to keep his private property, sidewalks, planting strips and trees in front of such private property, sidewalks, planting strips and trees in a safe condition so as not to be hazardous to public travel. This city shall be exempt from all liability, including but not limited to common-law liability, that it might otherwise incur to an injured party as a result of the city's negligent failure to keep trees in a safe condition so as not to be hazardous to public travel. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to trim trees or to remove any growth which creates an unreasonable risk of harm to persons or property. Said property owner(s) shall be liable to the city of Lafayette for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs

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and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by sections 8.400 to 8.495 to trim trees or to remove any growth which creates an unreasonable risk of harm to persons or property.

**8.485 Appeal.** If the city administrator refuses to issue any permit as required by sections 8.400 to 8.495, or if the city administrator requires the removal of a tree, the city administrator shall at once notify the applicant who may appeal to the city council in writing within 10 calendar days thereafter. The city council shall proceed to hear and determine the appeal, based upon information submitted by the permit applicant and the city administrator. In all cases, decision of the city council shall be final.

**8.490 Amendments.** Amendments to sections 8.400 to 8.495 may be initiated and shall be reviewed by the planning commission and park and recreation advisory board prior to submittal to the city council for adoption.

**8.495 Fees/Classification of Fees and Costs.** Fees shall be established by resolution of the city council and may be amended from time to time. The city council determines that the fees and costs imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

### SYSTEM DEVELOPMENT CHARGES (SDC'S)

#### **8.500 Purpose.**

This ordinance is intended to authorize system development charges pursuant to ORS 223.297 to 223.314 for the purpose of creating a source of funds to pay for the installation, construction, and extension of capital improvements. These charges shall be collected at the time of the development of properties which increase the use of capital improvements and generate a need for those facilities.

#### **8.505 Scope.**

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

#### **8.510 Definitions.**

(1) Capital Improvements. Facilities or assets used for:

(a) Water supply, treatment and distribution;

(b) Sewage and wastewater collection, transmission, treatment and disposal;

(c) Drainage and flood control;

(d) Transportation; or

(e) Parks and recreation.

(2) Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access.

(3) Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 8.525 of this ordinance.

(4) Land Area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

(5) Owner. The owner(s) of record title or the purchaser(s) under a recorded sales

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agreement, and other persons having an interest of record in the described real property.

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

(7) Permittee. The person to whom a Building Permit, Development Permit, Permit to Connect to the sewer or water system or Right-of-Way Access Permit is issued.

(8) Qualified Public Improvement. A capital improvement that is:

- (a) Required as a condition of development approval;
- (b) Identified in the plan and list adopted pursuant to Section 8.535 of this ordinance; and either,
- (c) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
- (d) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(9) Reimbursement Fee. A fee for costs associated with capital improvements already constructed or under construction on the date the fee is established, for which the City determines

that capacity exists, pursuant to Section 8.525 of this ordinance.

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

### **8.515 System Development Charge Imposed; Method for Establishment Created.**

(1) Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all development within the City, upon the act of making a connection to the City water or sewer system within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the sewer or water facilities of the City.

(2) System development charges shall be established and may be revised by resolution of the City Council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge.

### **8.520 Methodology.**

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(1) The methodology used to establish or modify the reimbursement fee shall, when applicable, be based on rate making principles employed to finance publicly owned capital improvements; prior contributions by then-existing system users, gifts or grants from federal or state government or private persons; the value of unused capacity available to future system users or the cost of the existing facilities; and other relevant factors identified by the Council. The methodology must promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish or modify the improvement fee shall demonstrate the consideration of the projected cost of capital improvements identified in the plan and list adopted pursuant to Section 8.535 that are needed to increase the capacity of the systems to which the fee is related, and the need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users.

(3) The methodology used to establish or modify the improvement fee or the reimbursement fee shall be adopted by resolution. The SDC methodology shall be made available for public inspection.

### **8.525 Authorized Expenditures.**

(1) Reimbursement fees may be spent only on capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(2) Improvement fees may be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements

funded by improvement fees must be related to the need for increased capacity to provide services for future users.

(3) A capital improvement being funded wholly or in part from system development charge revenues shall be included in the Systems Development Charge Funding Project Plan adopted by the City pursuant to Section 8.535 of this ordinance.

(4) Notwithstanding subsections 1, 2 and 3 of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of development system development charge methodologies and providing an annual accounting of system development charge expenditures.

### **8.530 Expenditure Restrictions.**

(1) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

### **8.535 Project Plan.**

Prior to the establishment of a system development charge, the Council shall adopt by resolution the Systems Development Charge Funds Project Plan. This Plan:

(1) Lists the capital improvements that the City intends to fund, in whole or in part, with improvement fee revenues; and

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(2) For each improvement, lists the estimated cost, timing, and percentage of costs eligible to be funded with improvement fee revenues.

In adopting this plan the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The City may modify this project plan at any time through the adoption of an appropriate resolution. There may be a separate plan for each system, or the plan may include improvements from more than one system. If a system development charge will be increased by a proposed modification of the list to include a capacity-increasing capital improvement, notice shall be given as provided in Section 8.560.

### 8.540 Collection of Charge.

(1) The systems development charge is payable upon issuance of:

- (a) A building permit;
- (b) A development permit for development not requiring the issuance of a building permit;
- (c) A permit to connect to the water system;
- (d) A permit to connect to the sewer system; or
- (e) A right-of-way access permit.

The resolution which sets the amount of the charge shall designate the permit or permits to which the charge applies.

(2) If development is commenced or connection is made to the water system, sewer system or storm sewer system without an appropriate permit, the system development charge is immedi-

ately payable upon the earliest date that a permit was required.

(3) The City Council or the designee shall collect the applicable system development charge from the permittee.

(4) The City Council or the designee shall not issue such permit or allow connection until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 8.545 of this ordinance, or unless an exemption is granted pursuant to Section 8.550 of this ordinance.

### 8.545 Installment Payment.

(1) When a system development charge is due and payable, the permittee may apply for payment in twenty (20) semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

(2) The City Council or designee shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(3) A permittee requesting installment payments shall have the burden of demonstrating the permittee's authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.

(4) The City Council or designee shall docket the lien in the lien docket. From that time, the City shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Council. The lien shall be

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enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

### 8.550 Exemptions.

(1) Structures and uses established and existing on or before the effective date of the resolution which sets the amount of the system development charge are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

(2) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Building Code, are exempt from all portions of the system development charge. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.

### 8.555 Credits.

(1) When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required, however, no refund or credit shall be given unless provided for by another subsection of this section.

(2) A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the improvement. The credit provided for in this subsection shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements may be granted only for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.

(3) When establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.

(4) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. Credit shall not be transferable from one development to another.

(5) Credits shall not be transferable from one type of system development charge to another.

(6) Credits shall be used within 10 years from the date the credit is given.

### 8.560 Notice.

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### (1) Modification of System Development Charge Funds Project Plan:

- (a) The City shall provide notice of the proposed modification to the persons who have requested notice, at least 30 days prior to the adoption of the modification.
- (b) The City shall hold a public hearing if the City receives a written request for a hearing on the proposed modification within seven (7) days of the date of the proposed modification is scheduled for adoption. A public hearing is not required if the City does not receive a written request for a hearing.
- (c) The City's decision to modify the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.

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

(3) A change in the amount of a reimbursement fee or improvement fee is not a modification of the system development methodology if the change in amount is based on:

- (a) A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the

list adopted pursuant to ORS 223.309; or

- (b) The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
  - (i) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property, or a combination of the three;
  - (ii) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
  - (iii) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

### **8.565 Segregation and Use of Revenue.**

(1) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds by the City. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this ordinance.

(2) The City Council shall provide an annual accounting, to be completed by January 1 of each year, of system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account in the previous fiscal year. The annual accounting shall include a list of the amount spent on each project funded, in whole or in part, with system development charge revenues, and the amount of such revenues attributed to the costs described in Section 8.525(4).

### **8.570 Appeal Procedure.**

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(1) A person aggrieved by a decision required or permitted to be made by the City Council under this ordinance or a person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Council describing with particularity the decision of the City Council or the expenditure from which the person appeals.

(2) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision must be filed within thirty (30) days of the date of the decision.

(3) The Council shall determine whether the City Council's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions.

If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year of the date of that determination to the credit of the account or fund from which it was spent. The final decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100 and not otherwise.

(4) A legal action challenging the methodology adopted by the Council pursuant to Sections 8.515 and 8.520 of this ordinance shall not be filed later than sixty (60) days after the adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100, and not otherwise.

### **8.575 Prohibited Connection.**

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

### **8.580 Penalty.**

Violation of this ordinance is a Class A infraction punishable by a fine not to exceed \$500.

### **8.585 Construction.**

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

### **8.590 Severability.**

The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

### **8.595 Classification.**

The City Council determines that any fees, rates or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

[Sections 8.500-8.595 added by Ordinance 571 on June 10, 2004]