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CHAPTER 30: CITY COUNCIL, GOVERNMENT AND ADMINISTRATION

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MEETINGS GENERALLY

‘ 30.01 REGULAR MEETING TIMES.

The City Council shall meet on the first and third Monday of each month at the City Hall. In the event of a holiday, the meeting shall take place the day following or on a day agreed upon by the Council at the meeting prior to the holiday.

(Ord. 1256a, passed 8-1-2011)

‘ 30.02 SPECIAL MEETINGS.

The Mayor, or in his or her absence, the President of the Council, may, or at the request of three members of the Council shall, by giving notice thereof to all members of the Council then in the city, call a special meeting of the Council by giving 24 hours’ advance notice to members of the Council, the media and other interested persons, and the public. No other business shall be transacted other than that for which the meeting was called. All proceedings of the meeting must be reviewed at the next regular Council meeting.

(Ord. 1256a, passed 8-1-2011)

‘ 30.03 EMERGENCY MEETINGS.

An emergency meeting is a special meeting called on less than 24 hours’ notice. There must be an actual emergency, and the minutes must describe the emergency justifying less than 24 hours’ notice. The governing body must attempt to notify the media and other interested persons, generally by telephone. No other business shall be transacted other than that for which the meeting was called. All proceedings of the meeting must be reviewed at the next regular Council meeting.

(Ord. 1256a, passed 8-1-2011)

‘ 30.04 EXECUTIVE SESSIONS.

Executive sessions may be held during any meeting of the Council providing all applicable statutory limitations are met. Any member of the Council may call for an executive session at a regular, special or emergency meeting for which notice has already been given in accordance with public meetings law requirements.

(Ord. 1256a, passed 8-1-2011)

‘ **30.05 CONFERENCE CALLS.**

Notice and opportunity for the media and public to be present must be provided when meetings are conducted by conference calls. For non-executive sessions, meetings held by telephone or other electronic means of communication, the public must be provided at least one place where its members may listen to the meeting by speakers or other devices. The media must be provided access to these facilities even for executive sessions, except where those sessions are exempt from the media.

(Ord. 1256a, passed 8-1-2011)

‘ **30.06 STUDY SESSIONS.**

A meeting held solely for the purpose of receiving information, except an on-site inspection, is subject to the public meetings law and must be advertised the same as regular meetings.

(Ord. 1256a, passed 8-1-2011)

BUSINESS OF COUNCIL

‘ **30.20 MEETING CONDUCT.**

(A) *Robert’s Rules of Order Revised* (the most current version) shall be used as a guide in the conduct of Council meetings. These rules of order may be relaxed at the discretion of the presiding officer to simplify and clarify matters before the Council.

(B) Each session is limited to three hours in length unless there is a unanimous vote of the Council to continue beyond that duration.

(Ord. 1256a, passed 8-1-2011)

‘ **30.21 QUORUM.**

The Mayor, or in his or her absence the President of the Council, shall call the meeting to order at the hour designated for the meeting. If a quorum is not present, the Recorder or designee shall immediately notify the absent member(s), except those known to be unavoidably detained or absent, that their presence is required. If there are three Council members present, they may order an officer of the city to direct any available absent member to attend the meeting. If a quorum cannot be obtained, the members present shall adjourn until another specified time or until the next regular meeting. (Ord. 1256a, passed 8-1-2011)

30.22 AGENDA.

(A) The Mayor and the City Manager shall prepare together the agenda for each meeting. In the absence of the Mayor or City Manager, or his or her official designees, the other may set the agenda individually.

(B) Any person desiring inclusion of agenda items (including Councilors, committees, the City Attorney and City Recorder) shall direct these to the Mayor and City Manager. This agenda shall be closed for further items at 5:00 p.m. on the Tuesday preceding the meeting except in the case of special meetings. All background materials shall be submitted by the following day, unless otherwise authorized by the Mayor or Manager.

(C) No vote shall be allowed on items not on the published agenda with the exception of an emergency. Any member of the Council may introduce an item not on the agenda if it constitutes an emergency. Emergency placement of an item onto the agenda requires a unanimous vote of the Council members present.

(D) A majority of the Council may approve the placement of a non-emergency item on the agenda; however, in order to provide adequate public notice, all non-emergency items shall be placed on the next regular agenda. (Ord. 1256a, passed 8-1-2011)

30.23 SUGGESTED ORDER OF BUSINESS.

The suggested order of business is as follows:

- (A) Call to order;
- (B) Approval of minutes of the previous meeting;
- (C) Proclamations and presentations;
- (D) Audience comments;
- (E) Noticed public hearings;

(F) Old business;

(G) New business;

(H) Committee, Council and staff reports;

(I) Bills against the city; and

(J) Adjournment.

(Ord. 1256a, passed 8-1-2011)

30.24 VOTING.

(A) A vote on every motion or question relating to the expenditure of funds shall be by roll call vote conducted by the City Recorder or designee.

(B) Written ballots are not prohibited, but each ballot must identify the member voting and the vote must be announced by the City Recorder or designee. Secret ballots are prohibited. In the event of a unanimous vote, it may be entered into the record as Unanimously approved/disapproved.

(C) A Council member may not indicate his or her vote during the course of discussion.

(D) A Council member may change his or her vote before the next item of business is taken.

(E) A member may not vote on any issue or matter in which he or she may have a potential conflict of interest, as defined by O.R.S. 244.020.

(F) A member may request to be excused from voting for special reason when approved by a majority of the Council. A member who abstains from voting must state the reason for his or her abstention.

(Ord. 1256a, passed 8-1-2011)

30.25 RECONSIDERATION OF ACTIONS TAKEN.

Any member who voted with the majority may move for a reconsideration of the action during the meeting at which the vote was taken. If the action is reconsidered, no further reconsideration may take place without the majority consent of Council.

(Ord. 1256a, passed 8-1-2011)

30.26 PUBLIC HEARINGS.

When a public hearing or a bid opening is scheduled, any agenda items in progress shall be recessed to comply with the advertised time. In the case of a public hearing, the presiding officer (hearing officer), upon completion of required announced information, shall call upon the members of the audience to come forth to be heard. If appropriate, the presiding officer may first ask those persons in favor of the stated matter to come forward, with those speaking in opposition to come after. The presiding officer may limit the time and number of speakers at the public hearing. In that event, the presiding officer shall announce these restrictions prior to commencement of the hearing.
(Ord. 1256a, passed 8-1-2011)

‘ **30.27 SERGEANT-AT-ARMS.**

The sergeant-at-arms shall be the Chief of Police, if present, or an appropriate designate.
(Ord. 1256a, passed 8-1-2011)

‘ **30.28 DESIGNATION OF HEARINGS OFFICER.**

A hearings officer may be appointed by the presiding officer to conduct special public hearings, when appropriate.
(Ord. 1256a, passed 8-1-2011)

‘ **30.29 SPEAKING BY COUNCIL MEMBERS GENERALLY.**

Every Council member desiring to speak shall address the Chair. Upon recognition, he or she shall confine remarks to the issue under debate.
(Ord. 1256a, passed 8-1-2011)

‘ **30.30 PUBLIC MEMBERS ADDRESSING THE COUNCIL.**

(A) Any person who may wish to address the Council may be asked to stand and wait to be recognized by the presiding officer. After recognition, the person’s name and address shall be stated for the record and the remarks shall be limited to the question under discussion. (All remarks and questions shall be addressed to the presiding officer and not to an individual Councilor, staff person or other individual.) No person may enter into any discussion without first being recognized by the Chair.

(B) Persons addressing the Council shall be limited to five minutes or less, unless a longer or shorter time has been granted by the presiding officer and announced before the proceeding takes place. No public member may speak twice on any one subject until every other public member wishing to speak has been heard. The second address shall be limited to three minutes unless permission is otherwise granted by the presiding officer.
(Ord. 1256a, passed 8-1-2011)

30.31 ORDER AND DECORUM.

(A) The Council commits itself and its members to ethical, businesslike and lawful conduct, including proper use of authority and appropriate decorum when acting as Council members. Accordingly:

(1) Council members will represent the interests of the citizens of the entire city. This accountability to the whole city supersedes:

(a) Any conflicting loyalty a member may have to other advocacy or interest groups;

(b) Loyalty based upon membership on other councils or staffs;

(c) Conflicts based upon the personal interest of any Council member;

(d) Conflicts based upon being a relative of an employee of the city; and

(e) Any other conflicts of interest as outlined by the State Standards and Practices Commission.

(2) Council members will not attempt to exercise individual authority over the organization.

(3) Council members may not attempt to exercise individual authority over the organization. As such:

(a) Council member interaction with the City Manager, City Recorder or with staff must recognize the lack of authority vested in individuals except when explicitly authorized by the Council; and

(b) Council member interaction with the public, press or other entities must recognize the same limitation and the inability of any Council member to speak for the Council except to repeat explicitly stated Council decisions.

(4) Council members shall maintain confidentiality appropriate to sensitive issues and information that otherwise may tend to compromise the integrity or legal standing of the Council and/or city, especially those matters discussed in closed session.

(B) The job of the Council is to represent the citizens and taxpayers and to lead the city by determining and requiring appropriate and excellent organizational performance.

(1) To distinguish the Council's own unique job from the jobs of the City Manager and staff, the Council will concentrate its efforts on the following:

(a) Determining and using proactive strategies to ensure constructive two-way dialogue for input from staff and citizens as a means to link the entire city around goal achievement;

(b) Developing written policies which, at the broadest levels, address:

1. Council process policies: how the Council will conceive, carry out and monitor its own work;

2. Council/executive relationship policies: how authority is delegated and its proper use monitored; the City Manager role, the City Recorder role and their authority and accountability (see Appendix A, which may be amended by resolution);

3. Executive accountability policies: constraints on executive authority which establish the practical, ethical and legal boundaries within which all staff activity and decision-making will take place and be monitored (see Appendix B, which may be amended by resolution); and

4. Strategic direction policies: what the Council intends for the city to achieve (see Appendix C, which may be amended by resolution).

(c) Ensuring City Manager performance by monitoring of the annual performance plan;

(d) Ensuring City Recorder performance by monitoring of the City Recorder's annual performance plan objectives; and

(e) Ensuring that the annual performance plan is the focus of organizational performance.

(2) Unless expressly stated otherwise, nothing in this or any other City Council rule or policy shall change any collective bargaining agreement, employment contract or Aat-will@ employment of any city employee.

(C) (1) Actions which cause the Council or general public to be unable to comfortably hear, see or breathe; to experience unwelcomed physical contact; or pose any threat to the health, welfare or safety of attendees, shall be sufficient cause for the sergeant-at-arms, at the direction of the Chair, to remove a person from the Council chambers or meeting hall for the duration of the meeting. These actions may include but are not limited to:

(a) The use of unreasonably loud or disruptive language;

(b) Making loud or disruptive noises, flashes or light;

(c) Engaging in violent or distractive actions;

(d) The willful injury to city property of any kind;

(e) Refusal to obey any rules of conduct provided within this chapter, including limitation on occupancy or seating capacity;

(f) Refusal to obey an order of the presiding officer; or

(g) Refusal to obey an order by a Council member, which has been approved by a majority of the Council members present.

(2) In division (A)(1) of this section, *UNREASONABLY LOUD OR DISRUPTIVE* means any noise, light, odor or conduct that intentionally or negligently disrupts or obstructs the ability of one or more Councilors to receive any communication from another during work or conduct of the business of the Council.

(D) Before the sergeant-at-arms is directed to remove a person(s) from the Council chambers or meeting place for conduct described in division (B) of this section, that person shall be given warning by the presiding officer to cease his or her disruptive conduct, unless the conduct poses an immediate threat to the health, welfare or safety of any person or city property.

(E) If a meeting is disrupted by members of the audience, a majority of the Council members present may order that the Council chamber or meeting hall be cleared. (State public meeting law will still apply. This will not allow the Council to deliberate toward a decision or to hold a closed or executive session except as provided in that law. A recess of the meeting should be considered to allow matters to calm down.)

(F) Signs or other devices which obstruct the ability of the Council and the general public to see each other are not allowed, nor shall signs or devices be adhered to the Chamber walls, with the exception of those needed as part of agenda presentations.
(Ord. 1256a, passed 8-1-2011)

' 30.32 PICTURE TAKING OR FILMING.

The taking of photographs or filming in the Council chambers or meeting hall shall be allowed except when it is done in violation of ' 30.31.
(Ord. 1256a, passed 8-1-2011)

' 30.33 FLAGS, SIGNS AND POSTERS.

No flags, signs, posters or placards, unless authorized by the presiding officer, may be carried, displayed or placed within the Council chambers or meeting hall in which the Council is officially meeting. This restriction shall not apply to arm bands, emblems, badges or other articles worn on personal clothing of individuals, providing that the devices are of a size and nature as not to interfere with the vision of other persons attending the meeting, and provided that the devices do not extend from the wearer in such a manner as to present a possible cause of injury to another.
(Ord. 1256a, passed 8-1-2011)

' 30.34 NEWS MEDIA.

The provisions of these rules shall not be construed to prevent news media representatives from performing their duties as long as the manner of performance is not unreasonably disruptive to the conduct of the meeting.

(Ord. 1256a, passed 8-1-2011)

ADMINISTRATION

' 30.45 COUNCIL COMMITTEES.

(A) The Mayor, at his or her discretion, may also convene special ad hoc committees of limited duration with the consent of a majority of the Council. These committees shall be charged with making recommendations regarding to the Council.

(B) Members of all standing committees shall be appointed by the Mayor, with the consent of a majority of the Council, at the second Council meeting in January of each year or as soon thereafter as convenient. Members of standing committees must reside or own a business within the city limits.

(1) The Mayor shall also designate Council members to serve as chair, vice-chair and liaison between the standing committees and the City Council. Each Council member should expect to serve on not less than two standing committees.

(2) Each member of a committee shall hold office for two years and until a successor is appointed.

(3) If a vacancy occurs in a committee, the Mayor, at the next succeeding regular meeting of the Council, with the consent of a majority of the Council, shall appoint a member of the Council to fill the vacancy. Any member so appointed shall hold office until January of the year following the appointment or as soon thereafter as convenient and until a successor is duly appointed.

(4) The committees are limited to a maximum of seven members (excluding staff). The member limitation does not apply to the Associations Committee, whose purpose is to be inclusive. The chair shall set the agenda in conference with staff.

(5) A majority of a quorum of a committee is sufficient to conduct committee business. Business shall be conducted in a manner similar to that proscribed in ' ' 30.20 and 30.29 through 30.34 above.

(6) The city staff will provide staff support and input and may make recommendations to committees but shall not have a vote on the committee.

(7) At the regular meeting of the Council following a committee meeting, the committees shall make a report, written or oral, of their activities or as soon thereafter as convenient.

(C) The City Council may establish or abolish standing committees by resolution in order to report and make appropriate recommendations to the Council, and recommend adoption of ordinances and/or resolutions that it considers necessary for the welfare of the city. At the time of the ratification of these rules, the following standing committees shall be considered in place:

(1) *Committee on Personnel.* The Committee on Personnel shall:

- (a) Coordinate City Manager, City Recorder and Municipal Judge annual evaluations;
- (b) Coordinate and make recommendations for changes to the Employee Handbook; and
- (c) Periodically evaluate all personal service contracts.

(2) *Committee on Beautification, Parks and Open Space.* The Committee on City Beautification, Parks and Open Space shall consider all matters relating to parks, open space, seasonal street decoration, and uses of city beautification funds, city beautification needs and holiday celebrations and matters that are referred to it by the Mayor.

(3) *Committee on Finance.* The Committee on Finance shall consider all matters relating to city budget, city fiscal affairs, loans, grants, assessment impacts and government grants and matters that are referred to it by the Mayor.

(4) *Committee on Public Safety.* The Committee on Public Safety shall consider all matters relating to public health and safety, city police, intergovernmental relations with the Fire District, 911, County Sheriff, state police and outreach, schools, youth and elderly.

(5) *Committee on Public Works.* The Committee on Public Works shall:

- (a) Consider all matters relating to streets, on-street parking, parking district, sewers, alleys, sidewalks, public ways, water facilities and public buildings and matters that are referred to it by the Mayor;
- (b) Recommend rates to be charged for city water and sewer services; and
- (c) Propose improvements to streets, on-street parking, parking district, sewer facilities, alleys, sidewalks, public ways, water facilities and public buildings.

(6) *Committee on Associations.* The Committee on Associations shall consider all matters relating to city visioning, downtown development and city partnerships.

(D) Notwithstanding the above divisions (A) through (C), the following commissions and committees shall require Council consent for membership and shall be guided by the requirements of state law and any supplemental bylaws that they may adopt:

- (1) Planning Commission; and

(2) Budget Committee.

(E) City Councilors appointed to any committee or commission, which may from time to time request and/or require municipal funds, shall work with the committee in the formation of its budget and be prepared to support and explain the budget items presented to the City Council.

(F) All committees shall keep action minutes or shall electronically record the proceedings of their meetings. The committee chair or his or her designate shall be responsible for turning the record in to City Hall.

(Ord. 1256a, passed 8-1-2011)

30.46 CHAIN OF COMMAND.

(A) (1) No elected or appointed official shall issue directives individually to department heads or city employees. Complaints about an employee's job performance are to be directed to the City Manager. Complaints about the City Recorder or City Manager's job performance are to be directed to the Personnel Committee.

(2) The City Manager and City Recorder are the Council's only links to operational achievement and conduct; all authority and accountability of employees, as far as the Council is concerned, is considered the authority and accountability of the City Manager. Accordingly:

(a) The Council will not give instructions to persons who report directly or indirectly to the City Manager;

(b) The Council will not evaluate the performance of any employee other than the City Manager and the City Recorder; and

(c) The Council will review City Manager and City Recorder performance annually and will consider City Manager performance as identical to city performance. This includes achievement of the strategic direction policies, and financial performance as identified in the approved budget.

(B) No department head or employee, with the exception of the City Recorder and Municipal Judge, shall present requests to elected or appointed officials except in an emergency. All nonemergency requests are to be submitted first to the appropriate department head before submission to the City Manager. The City Manager shall determine which requests are forwarded to the City Council. This division (B) shall not pertain to grievance or whistleblower concerns, which shall be subject to the processes described in the Employee Handbook and any relevant union contract.

(Ord. 1256a, passed 8-1-2011)

30.47 ANNUAL POSITION REVIEW.

While the Council is encouraged to communicate with staff, the Council's connection to the city's

daily operations, its achievements and conduct will be through the City Manager (except for those areas of responsibility that are the City Recorder's, where it will be through the City Recorder).

(A) Systematic and rigorous monitoring of City Manager and City Recorder job performance will be against the expected progress and eventual results of the annual performance plan and in compliance with the boundaries specified in executive accountability policies. The Council will acquire monitoring data by one or more of three methods:

(1) By internal report, in which the City Manager or City Recorder discloses compliance information to the Council;

(2) By external report, in which an external, disinterested third party selected by the Council assesses compliance with city policy; and/or

(3) By direct Council member inspection, in which the member assesses compliance with the appropriate policy criteria.

(B) All policies that set boundaries for the City Manager and City Recorder will be monitored at a frequency and by a method recommended and approved by the Council. The Council can monitor any policy at any time by any method.

(Ord. 1256a, passed 8-1-2011)

' 30.48 USE OF LEGAL AND PROFESSIONAL SERVICES.

(A) All requests for formal opinion and information to and from the City Attorney or other personal service contractors shall be channeled through the Mayor, Council President or City Manager. If three or more Councilors request certain professional services, the Council President shall authorize the use. This does not preclude an individual Councilor from contacting the City Attorney for a brief informal legal opinion that must then be promptly communicated to the entire Council.

(B) All requests for legal or other professional opinion shall be submitted in writing.

(C) The City Attorney shall not deal directly with developer's legal agents or other individuals desiring to initiate actions requiring Council and/or Planning Commission approval, unless directed to do so by the City Council.

(D) Attorneys representing developers and/or other parties shall direct all matters regarding the city to the attention of city staff for routing through established procedural protocols. Should there be any question of proceeding outside of established protocols, the City Council of the city will determine the appropriate disposition of the referenced matter and whether the matter is capable of being resolved by City Council action or requiring legal services.

(E) All records of billing submitted to the city for professional services shall reflect the subject and topic of each and every topic area (for example, phone call re: (topic) and to whom; conference/meeting re: (topic and purpose)).

(Ord. 1256a, passed 8-1-2011)

' 30.49 REPRESENTING THE CITY.

(A) City stationery and an official's title shall be used when stating previously expressed (verbal or written) city policy or when requesting information or assistance, except as so directed at a public meeting by a majority of Council members present.

(B) The Mayor, as a chief elected official, and thus spokesperson for the city along with the City Manager, shall be allowed to use city stationery to extend invitations to city-related functions and to send letters of appreciation or condolence. The Mayor or City Council may delegate this authority to another.

(C) No elected or appointed official shall use city stationery to express personal viewpoints or for private correspondence.
(Ord. 1256a, passed 8-1-2011)

' 30.50 RULES IN GENERAL.

(A) In the event any rule established by Council is found to be contrary to the Municipal Charter, state or federal law, the appropriate Charter provisions or laws shall take precedence.

(B) If any rule within these rules is found to be in conflict with previous Council rules, the previous Council rules shall be amended to resolve the conflict.

(C) As needed or required by law or administrative order, the Council rules shall be revised, deleted or new rules introduced by amendment or revision. Modification or changing of one or more rules shall have no effect upon the other rules of Council.

(D) The appendices to these rules (see Appendices A, B and C following) may be modified by resolution.
(Ord. 1256a, passed 8-1-2011)

**APPENDIX A: DELEGATION OF AUTHORITY TO THE
CITY MANAGER AND CITY RECORDER POLICY**

Delegation of Authority to the City Manager and City Recorder Policy

The Council will instruct the City Manager and City Recorder through written policies that prescribe the city goals to be achieved and describe organizational situations and actions to be avoided. The Council will support any reasonable interpretation of those policies by the City Manager or City Recorder respective to their assigned responsibilities. Accordingly:

(A) Council will develop policies instructing the City Manager or City Recorder to achieve defined goal results. These policies will be developed systematically from the broadest, most general level to more defined levels, and may be called strategic direction policies;

(B) Council will develop policies that limit the latitude the City Manager or City Recorder may exercise in choosing the organizational means. These policies will be developed systematically from the broadest, most general level to more defined levels, and they may be called executive accountability policies;

(C) As long as the City Manager or City Recorder uses any reasonable interpretation of the Council's strategic direction policies and executive accountability policies, the City Manager or City Recorder is authorized to establish all further policies, make all decisions, establish all practices and develop all activities they deems appropriate to achieve the Council's goals; and

(D) The Council may change its strategic direction policies and/or executive accountability policies at any time, thereby shifting the boundary between Council and City Manager/City Recorder domains. By doing so, the Council changes the latitude of choice given to the City Manager or City Recorder. However, as long as any Council-specified delegation of authority is in place, the Council will respect and support any reasonable interpretation of its policies.

(Ord. 1256a, passed 8-1-2011)

APPENDIX B: EXECUTIVE ACCOUNTABILITY POLICIES

Policy I: City Manager Executive Accountability Policy:

(A) *City Manager responsibility.* The City Manager shall ensure that all city practices, activities, decisions and organizational circumstances are lawful, prudent and in conformance with commonly accepted business and professional ethics, including but not limited to the following:

(1) The City Manager shall ensure the city's assets are protected, adequately maintained and risked only as necessary. Accordingly the City Manager shall:

- (a) Allow only authorized personnel access to material amounts of funds;
 - (b) Monitor facilities or equipment for improper wear and tear or insufficient routine maintenance;
 - (c) Protect the city, Council or staff from unnecessary claims of liability;
 - (d) Assure that any non-inventory purchase:
 - 1. Of over \$5,000 has obtained at least three comparative prices and qualities where brand consistency is not a consideration (i.e., Dell/Gateway/Apple computers); and
 - 2. Of over \$150,000 has utilized a stringent method of assuring the balance of long-term quality and cost through a formal bidding process.
 - (e) Be limited in authority to only purchases under \$5,000 without Council approval, with the exception of budgeted maintenance items;
 - (f) Protect intellectual property, information and files from loss or significant damage, or access by unauthorized persons;
 - (g) Receive, distribute and/or account for funds under controls that are sufficient to meet standard accounting practices and/or to protect the city;
 - (h) Invest or hold operating capital in secure instruments, including insured checking accounts or in interest-bearing accounts except where necessary to facilitate ease in operational transactions or where it benefits the city;
 - (i) Enhance the city's image or credibility, particularly in ways that would facilitate its accomplishment of its mission; and
 - (j) Timely provide Council, City Recorder, staff, contract vendors and the public with the information necessary to carry on the city's business.
- (2) With respect to the treatment of employees, the City Manager shall cause or allow

conditions that are fair or dignified. Accordingly, the City Manager shall:

(a) Operate by following written personnel policies that clarify personnel rules for employees, provide for effective handling of complaints and protect against wrongful or illegal conditions;

(b) Protect all employees from discrimination at any time for any reason;

(c) Facilitate employees in taking a complaint to the Council when internal complaint procedures have been exhausted; and

(d) Acquaint staff with this policy.

(3) Financial planning in any fiscal year mandates that actual expenditures remain within the budget parameters, except for approved budget adjustments. Accordingly, the City Manager shall provide a budget that:

(a) Contains sufficient information to enable credible projection of revenues and expenses, separation of capital and operational items, cash flows and disclosure of planning assumptions; and

(b) Acquires, encumbers or disposes of real property with the Council's approval.

(4) Regarding employment, compensation and benefits to employees, consultants and contract workers, the City Manager shall protect the city's fiscal integrity and image. Accordingly, the City Manager may not:

(a) Change his or her own compensation and/or benefits;

(b) Promise or imply benefits that are outside approved benefit policies;

(c) Promise or imply permanent or guaranteed employment; or

(d) Establish compensation that deviates materially from the geographic or professional market for the skills employed and/or that is outside of the approved budget.

(5) The City Manager shall keep the Council informed and supported in its work. Accordingly, the City Manager shall:

(a) Submit monitoring data, status reports, financial information or other pertinent information required by the Council in a timely, accurate and understandable manner;

(b) Let the Council be aware of relevant trends or significant changes of any kind that could or have negatively impacted the city; and

(c) Report in a timely manner an actual or anticipated noncompliance with any

Council-approved policy.

(6) Regarding city insurance, employee benefit providers and employee wages, the City Manager shall:

- (a) Review annually all benefits providers for cost and comparative services; and
- (b) Do bi-annual wage research and analysis.

(B) *Staff treatment.* With respect to treatment of paid and volunteer staff, the City Manager shall cause or allow conditions, procedures, actions or decisions which are lawful, ethical, safe, respectful, dignified, moral, reputable and in accordance with Council policy. Accordingly, the City Manager shall:

(1) Develop procedures for reasonable background inquiries and checks prior to hiring any paid personnel or utilizing the services of any volunteers;

(2) Operate within the parameters of written personnel and administrative policies which:

- (a) Clarify personnel rules and procedures for staff;
- (b) Provide for effective handling of grievances;
- (c) Include adequate job descriptions for all staff positions;
- (d) Include salary and compensation plans that comply with state law;
- (e) Include an effective personnel performance evaluation system;
- (f) Establish procedures for reductions in force;
- (g) Protect against sexual harassment;
- (h) Protect against racial, religious, gender, age, disability and ethnic bias or discrimination; and
- (i) Provide for a drug-, smoke- and alcohol-free workplace.

(3) Facilitate employees in grieving to the Council when internal grievance procedures have been exhausted and the employee alleges that Council policy has been violated;

(4) Protect confidential information;

(5) Provide for open communication and the sharing of ideas; and

(6) Provide staff with an opportunity to become familiar with the provisions of this policy.

Policy II: City Recorder Executive Accountability Policy:

The City Recorder shall help to ensure that all city practices, activities, decisions or organizational circumstances are lawful, prudent and in conformance with commonly accepted business and professional ethics, including but not limited to the following:

(A) The City Recorder shall assure that the city's assets are protected, adequately maintained and risked only as necessary. Accordingly, the City Recorder shall:

(1) Insure against theft and casualty losses to at least 100% of replacement value and against liability losses to the city, employees and the organization itself in an amount greater than the average for comparable organizations;

(2) Allow only authorized personnel access to material amounts of funds;

(3) Protect the city, Council or staff from unnecessary claims of liability;

(4) Assure that any non-inventory purchase of over \$5,000 has obtained at least three comparative prices and qualities where brand consistency is not a consideration (i.e., Dell/Gateway/Apple computers);

(5) Be limited in authority to only purchases under \$5,000 without Council approval with the exception of budgeted maintenance items;

(6) Protect intellectual property, information and files from loss or significant damage, or access by unauthorized persons;

(7) Receive, distribute and/or account for funds under controls that are sufficient to meet standard accounting practices and/or to protect the city;

(8) Invest or hold operating capital in secure instruments, including insured checking accounts or in interest-bearing accounts, except where necessary to facilitate ease in operational transactions or where it benefits the city;

(9) Protect the city's image or credibility, particularly in ways that would enhance its accomplishment of its mission; and

(10) Timely provide Council, City Manager, staff, contract vendors and the public with the information necessary to carry on the city's business.

(B) With respect to the treatment of employees, the City Recorder shall ensure conditions that are fair or dignified. Accordingly, the City Recorder shall:

(1) Operate within the written personnel policies that clarify personnel rules for employees, provide for effective handling of complaints, and protect against wrongful or illegal conditions;

(2) Protect against discrimination toward any employee at any time for any reason;

(3) Facilitate employees in taking a complaint to the Council when internal complaint procedures have been exhausted; and

(4) Acquaint staff with this policy.

(C) Financial planning in any fiscal year mandates that actual expenditures remain within the budget parameters, except for approved budget adjustments. Accordingly, the City Recorder shall assist in budgeting that:

(1) Settles payroll and debts in a timely manner;

(2) Assures that tax payments or other government-ordered payments or filings will not become overdue or inaccurately filed; and

(3) Aggressively pursues receivables after a reasonable grace period.

(D) Regarding employment, compensation and benefits to employees, consultants and contract workers, the City Recorder shall protect the city's fiscal integrity or image. Accordingly, the City Recorder may not:

(1) Change her or his own compensation and/or benefits; or

(2) Promise or imply benefits that are outside approved benefit policies.

(E) The City Recorder shall keep the Council informed or supported in its work. Accordingly, the City Recorder shall:

(1) Submit monitoring data, status reports, financial information or other pertinent information required by the Council in a timely, accurate and understandable manner;

(2) Make the Council aware of relevant trends or significant changes of any kind that could or have negatively impacted the city; and

(3) Report in a timely manner any actual or anticipated noncompliance with any Council-approved policy.

(F) Regarding city insurance, employee benefit providers and employee wages, the City Recorder shall get bi-annual bids from insurance broker.

(Ord. 1256a, passed 8-1-2011)

APPENDIX C: STRATEGIC PLAN FOR THE CURRENT YEAR

The strategic plan for the current year is hereby adopted by reference as if set out in full herein.
Copies are available in city offices.
(Ord. 1256a, passed 8-1-2011)

CHAPTER 31: CITY OFFICIALS

Section

- 31.01 Bond of Recorder-Treasurer
- 31.02 City Recorder; maintenance of ordinance book

' 31.01 BOND OF RECORDER-TREASURER.

(A) *Recorder's bond.* Before assuming the duties of his or her office, the Recorder-Treasurer shall execute and deliver to the Mayor a bond in a penal sum of not less than \$25,000 and any additional amounts as the Council may find necessary. The bond shall be conditioned upon the Recorder-Treasurer faithfully performing the duties of his or her office and truthfully accounting for all money and other valuable property coming into his or her possession by virtue of his or her office.

(B) *Sureties.* Any bond required by this section shall be executed by two or more sureties, who shall be freeholders and residents of the city, having the qualifications of bail upon arrest. In lieu of these sureties, any bond required by this section may be executed by an indemnity insurance or surety company organized or licensed to transact business in this state.

(C) *Approval; premiums.* Each bond required by this section shall be subject to the approval of the Mayor acting by and with the advice and consent of the Council; and if the bonds are executed by a surety company, the premiums thereon shall be paid by the city in the same manner as other claims against the city are paid.

(1977 Code, ' 1-6) (Ord. 719, passed 8-3-1959)

' 31.02 CITY RECORDER; MAINTENANCE OF ORDINANCE BOOK.

(A) *Ordinance numbering and retention.* The City Recorder shall number each ordinance passed by the City Council in order of its passage and file it in his or her office in the same order. No original ordinance shall be permitted to be taken from the office of the City Recorder.

(B) *Signature and seal.* The City Recorder shall record in numerical order in a permanent record book a copy of every ordinance passed by the City Council. The copy shall contain a statement signed by the City Recorder over the seal of the city to the effect that the same was recorded by the City Recorder and is a full, true and correct copy of the original ordinance, and of the whole thereof. This record shall be prima facie evidence of the passage of the ordinance in all legal proceedings and in every other case.

(C) *Compilation revision.* In addition, it shall be the duty of the City Recorder, as ordinances or

Charter provisions may hereafter be passed and repealed, to revise the cumulative compilation of ordinances known as AA Compilation of the Ordinances of Tillamook City@ in the manner best adapted to the maintenance of the efficiency of the cumulative compilation and in accordance with the suggested methods for revision contained in the introduction to the compilation.

(1977 Code, ' 1-1) (Ord. 567, passed 6-2-1941)

CHAPTER 32: CITY ORGANIZATIONS AND DEPARTMENTS

Section

Boards and Commissions

- 32.01 City Planning Commission; bylaws
- 32.02 Contract Review Board
- 32.03 Urban Renewal Agency

Police

- 32.15 Auxiliary reserve police force
- 32.16 Authorization to check criminal information records of State Law Enforcement Data System

BOARDS AND COMMISSIONS

' 32.01 CITY PLANNING COMMISSION; BYLAWS.

The City Council hereby ordains that previous Planning Commission provisions are replaced by the new Planning Commission bylaws contained in Exhibit A attached to Ordinance 1257, which are hereby incorporated by reference and adopted herein.

(1977 Code, ' 1-5) (Ord. 1257, passed 9-6-2011)

' 32.02 CONTRACT REVIEW BOARD.

(A) *Contract Review Board designated.* The members of the Tillamook City Council are designated the City's Local Contract Review Board (hereafter "Board") in which body is vested all the rights, responsibilities and duties pertaining thereto under Oregon law, including without limitation the right to adopt and maintain rules of procedure that the contracting agency will use for public contracts.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The local Contract Review Board as established in division (A) above.

PUBLIC CONTRACT. Any purchase, lease or sale by this City Council of personal property, public improvements or services other than agreements which are exclusively for personal service.

PUBLIC IMPROVEMENT. Any construction or improvements on real property by or for the city or the City Council.

(C) *Bids required.* All public contracts defined as any purchase, lease or sale by the City Council, public improvements or services other than agreements for personal service shall be based upon competitive bids except those exempted by the laws of this state or by Board rule.

(D) *Rules adopted.* The Local Contract Review Board as established in this section shall adopt by resolution rules pertaining to all contracting at the local level; the rules may exempt from competitive bidding certain contracts and shall set forth procedures for competitive bidding.
(1977 Code, ' 1-16) (Ord. 927, passed 10-18-1978)

' 32.03 URBAN RENEWAL AGENCY.

(A) *Declaration of blight.* Pursuant to O.R.S. 457.035, the City Council, hereinafter referred to as Acity,@ hereby finds and declares that blighted areas, as defined in O.R.S. 457.010, exist within the city based upon the findings marked in Exhibit A attached to the ordinance establishing this section and incorporated by reference as fully set forth herein.

(B) *Need.* The city declares and recognizes that there is a need for an Urban Renewal Agency to function within the city.

(C) *Powers and limitations.* The city further declares, pursuant to O.R.S. 457.045(2) that all of the rights, powers, duties, privileges and immunities granted to and vested in an Urban Renewal Agency by the laws of this state shall be exercised by and vested in the Urban Renewal Agency of the city; provided, however, that any act of the governing body acting as the Urban Renewal Agency shall be, and shall be considered, the act of the Urban Renewal Agency only and not of the City Council.

(D) *Agency title.* The corporate name of the agency created by this section shall be and the agency shall be known as the ACity Urban Renewal Agency.@

(E) *Membership.* The City Urban Renewal Agency shall be comprised of seven members, including two members of the City Council as it lawfully exists from time to time; and five at-large positions as prescribed in the Agency's bylaws.

(F) *Effective date.* This section shall take effect 30 days following its adoption by the Council.
(Ord. 1211, passed 7-17-2006)

POLICE**' 32.15 AUXILIARY RESERVE POLICE FORCE.**

(A) *Auxiliary reserve police force; residence requirement.* The Chief of Police of the city is hereby authorized to organize an auxiliary reserve police force for the city, which reserve police force to consist of not more than 15 in number, to serve without compensation, and to be residents of the city or to live within a distance of five miles of the city limits of this city.

(B) *Selection and tenure.* The Chief of Police of the city is hereby authorized to provide and furnish forms for signature by applicants for membership in the auxiliary reserve police force of the city, and the selection for membership shall be made by the Chief of Police. Any member of the auxiliary police reserve may be removed by the Chief of Police with or without cause.

(C) *Supervision; duties and powers.* Any applicant selected for service in the auxiliary reserve police force of the city shall take and subscribe to the oath of office required of police officers of the city and shall be subject to the directions and orders of the Chief of Police of the city and shall, during that service, have the powers and duties of a regular police officer of the city.

(D) *Badges.* Membership and authority as a member of the auxiliary police reserve of the city shall be indicated by arm bands and/or appropriate insignia and badges to be designated, selected and furnished by the Police Department of this city.
(1977 Code, ' 1-7) (Ord. 755, passed 2-19-1962)

' 32.16 AUTHORIZATION TO CHECK CRIMINAL INFORMATION RECORDS OF STATE LAW ENFORCEMENT DATA SYSTEM.

(A) *Purpose.*

(1) In order to maintain the public's trust and confidence, and to safeguard the city's general health, safety and welfare responsibilities, including without limitation fiscal responsibilities protecting the public funds and property, and in protecting confidential, privileged and/or proprietary information, the city requires:

(a) Its employees, public officials, volunteers and contractors performing or assisting a function of municipal government to be trustworthy, ethical and competent in fulfilling their respective public duties; and

(b) Persons applying for, and maintaining, any commercial license subject to the City Council's prior approval.

(2) In order for the city to fulfill the purpose here and to make informed decisions toward licensing recommendations or approvals, the city requires a criminal information record check of each person applying for and/or holding employment with the city, and/or a commercial license subject to

the City Council's prior approval. Further, the city may require a criminal information record check of any city volunteer or contractor as the city, in its sole discretion, considers necessary or desirable in connection with the functions to be performed.

(B) *Definitions.*

(1) *Specifics.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

LICENSE. Permission from a competent municipal or state government authority to do an act which, without this permission, would be illegal, a trespass or a tort. **LICENSE** includes but is not limited to commercial resale business license, transient merchant license, taxi license and/or State Liquor Control Commission licenses or renewals. A **LICENSE** here does not include a registration with any government entity where the person's action is legal whether or not the person is registered, e.g., the city's business registration license.

(2) *State law definitions.* Except where the context clearly indicates a different meaning, the definitions contained in the Oregon Revised Statutes (Astate statutes,@ abbreviated O.R.S.) and Oregon Administrative Rules (abbreviated O.A.R.), as now or hereafter constituted, are adopted by reference and made a part of this section. In any conflict of laws, the city's definitions and interpretation shall control. The City Council expressly retains the exclusive authority to define and interpret the meaning and application of the city's ordinances, orders, rules, resolutions and/or other city law, even those laws borrowed from any other jurisdiction and incorporated as city law, e.g., state statutes.

(C) *Procedure for criminal information record check.*

(1) The city shall conduct requests for criminal information records checks according to the procedure herein, O.R.S. Chapter 181, specifically including O.R.S. 181.555 and 181.557, and applicable State Administrative Rules, specifically including O.A.R. 257-10-025 to 257-10-050, all of which establish procedures for access to Oregon State Police (OSP) criminal record information through the Law Enforcement Data System (LEDS).

(2) Whenever possible or required, the city shall first obtain a person's consent before submitting a request for criminal information record check through the City Police Department. Where a criminal information record check is required and consent either is refused or cannot be obtained reasonably, the city shall provide the person subject to this subchapter with notice the criminal information record check may be made. Notice to the person shall be made prior to the city's request for the criminal information record check.

(3) Notice shall advise the person of:

(a) The manner in which the person may be informed of the procedures adopted under O.R.S. 181.555(3) for challenging inaccurate criminal offender information;

(b) Rights, if any, under Title VII of the Civil Rights Act of 1964;

(c) The notice shall also advise the person that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law; and

(d) The individual may obtain further information by contacting the State Bureau of Labor and Industries.

(4) A city official, e.g., a member of the City Police Department, trained and authorized to perform criminal history checks through the LEDS system shall conduct the city's criminal information record checks. Report results shall be provided to the appropriate city official responsible for making a decision which includes such a check as a part of that decision. The results shall first indicate either *No criminal record* or *Criminal record* exists. If a criminal record exists, then the city shall request a written criminal history report from the City Police Department. This criminal history report shall be made available to the appropriate city official responsible for making a decision in consideration whether or not to grant or deny the employment, license or other approval requested.

(5) The appropriate city official responsible for making a decision shall also consider factors, such as but not limited to the number and types of crimes or offenses, the age of the offense, subsequent rehabilitation, and public sensitivity relative to the nature of the position or decision under consideration. Access to criminal information records reports shall be limited to only authorized persons who have an official need as sanctioned by law or regulation.

(6) Any contested case hearing required by the law of this subchapter shall be before the Municipal Judge sitting as city's administrative law judge or hearing officer. For purposes of this subchapter, where any state law or rule referenced by this subchapter and where the context requires, any reference to the state or state agency shall include the city, and any department or subdivision thereof.

(D) City Recorder duties and responsibilities.

(1) The City Recorder shall be responsible for maintaining a record of:

(a) Signed consents from persons authorizing the city to conduct a criminal information record check;

(b) Notices required under this subchapter to persons who do not consent to a criminal information record check where that check is otherwise required;

(c) Results of a criminal information record check on persons not hired to city employ in accordance with the city general records retention schedule;

(d) Results of a criminal information record check on persons hired to city employ as part of the person's confidential personnel file; and

(e) Results of a criminal information record check of any applicant for any commercial license, contractor and/or volunteer.

(2) Further, the City Recorder shall destroy criminal information records as soon as they are no longer required for the city's purposes here and according to the city's general records retention schedule.

(E) *Effective date.* This section shall take effect 30 days following the date of its passage and adoption.

(Ord. 1233, passed 6-16-2008; Ord. 1244, passed 12-21-2009; Ord. 1265, passed 1-3-2012)

CHAPTER 33: ELECTION PROCEDURES

Section

Tax Levy Elections

- 33.25 Resolution for special election
- 33.26 Election procedure
- 33.27 Polling place
- 33.28 Voting; results of election
- 33.29 Ballot title; explanation
- 33.30 Statement of question on ballot
- 33.31 Form of tax measure submission; limitations

Compensation under O.R.S. Chapter 197

- 33.45 Review of demands for compensation under O.R.S. Chapter 197, adopted

- 33.99 Penalty

Cross-reference:

Taxation, see Ch. 35

''

TAX LEVY ELECTIONS

' 33.25 RESOLUTION FOR SPECIAL ELECTION.

Whenever it is necessary in the estimation of the City Council of this city to increase the amount of the tax levy over the amount limited by the Constitution of this state except on vote of the people, the City Council shall make and enter a resolution for a special election on a date certain on the question and shall certify to the City Recorder that the increase, in its judgment, is necessary, stating the amount of the increase. The resolution shall be made not more than 35 days nor less than 15 days prior to the date set for the special election in the resolution and shall require the City Recorder to perform the acts set forth in ' 33.26.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.26 ELECTION PROCEDURE.

Upon the passage of the resolution referred to in ' 33.25, the City Recorder shall:

(A) Give notice of the election by:

(1) Posting written notice of the election not less than 14 days prior to the date of the election in three public places within the city: on the bulletin board of the City Hall of this city; on the bulletin board inside the northwest entrance to the County Courthouse; and any other public place as may be determined by the City Recorder; and/or

(2) By publishing in two consecutive issues of a newspaper designated by the City Council, the first publication to be not less than 14 days prior to the date of the election and the last publication not less than seven days before the date of the election.

(B) Appoint an Election Board consisting of a chairperson and not less than two clerks;

(C) Appoint a Counting Board consisting of a chairperson and not less than two clerks;

(D) Obtain from the County Clerk current poll books containing the names of all voters qualified to vote at the election within this city; and

(E) Provide the printed ballots to be used at the special election in conformity with the provisions of this subchapter, and to make all other provisions and arrangements for the fair and efficient conduct of the election.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.27 POLLING PLACE.

Unless a special election, called pursuant to resolution under this subchapter, can be held at the same time a regular election is to be held throughout the state, or a special election is held throughout the state or county for any other purpose, the polling place for the special election called pursuant to this subchapter shall be at the City Hall of this city from 8:00 a.m. to 8:00 p.m.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.28 VOTING; RESULTS OF ELECTION.

A special election called by the City Council as herein provided for shall be held on the date set; and the votes cast upon the election shall be received, counted, returned and canvassed by the Election Board and the Counting Board, with the results thereof reported to the City Recorder, who shall have custody of the ballots and ballot boxes following election and who shall immediately report the results of the election to the City Council of this city.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.29 BALLOT TITLE; EXPLANATION.

In submitting a question to the voters under this subchapter, the City Council may submit an explanation of the question in not more than 150 words. This explanation shall be printed on the ballot and shall be in addition to the ballot title. The explanation shall be plainly worded and factual and shall avoid as far as practicable the use of technical terms. The explanation shall not advocate a Ayes@ or Ano@ vote on the question.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.30 STATEMENT OF QUESTION ON BALLOT.

The question of increasing any tax levy when submitted to the vote of the people as provided in this subchapter shall be stated on the ballot by including in the question the statement of the reasons for increasing the tax levy made by the tax levying body of the city. The votes of the people shall be given upon the answers, Ayes@ and Ano@ in the usual manner of submitting questions to the vote of the people.

(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

' 33.31 FORM OF TAX MEASURE SUBMISSION; LIMITATIONS.

(A) Whenever a proposed tax levy, whether a continuing fixed levy, continuing levy or levy for a single year, is submitted to a vote of the people by the city, the measure submitted shall state the total amount of money to be raised by the proposed levy in dollars and cents.

(B) Except as provided in divisions (C) and (D) of this section, in any election requesting authorization to levy taxes over the amount limited by the Constitution except on vote of the people, if the total taxes which would be levied if the voters approve the request will differ from the total taxes levied in the prior year, the measure shall state the dollar amount by which that portion of the operating budget to be financed wholly by the levy of property taxes for the fiscal year beginning July 1 of the current calendar year is increased or decreased over the dollar amount for the preceding year in substantially the following form:

If this measure is approved, the operating budget to be financed by local taxes for the year 20__ - 20__ will be \$ _____ greater (or less) than the operating budget financed by local taxes for the preceding year.

(C) Division (B) of this section has no application to budgets for serial levies or for levies for bonds, nor shall these budgets be included in the computation of the dollar amounts under division (B) of this section.

(D) If more than one measure to levy taxes over the amount limited by the Constitution except on a vote of the people referred to in division (B) of this section is submitted to the voters in a manner that the voters may accept or reject one or more of the measures, each measure shall show the dollar amount required by division (B) of this section computed on the basis of the operating budget for the same purpose for the preceding year.

(E) This section has no application to elections and levies with respect to bonds for which provision is made in O.R.S. Chapter 287A or other laws.

(F) The statement required by this section shall be added to and made a part of the 150-word explanation required by ' 33.29, but the number of words contained in the statement required by this section shall not be included in the 150-word limitation.
(1977 Code, ' 1-11) (Ord. 836, passed 5-19-1975)

COMPENSATION UNDER O.R.S. CHAPTER 197

' 33.45 REVIEW OF DEMANDS FOR COMPENSATION UNDER O.R.S. CHAPTER 197, ADOPTED.

Ordinance 1197, which establishes a process and procedures for the city for the Review of Demands for Compensation under O.R.S. Chapter 197 as Amended by Ballot Measure 37 Passed November 2, 2004, and creating a private cause of action, is hereby adopted by reference as if set out in full herein. Copies are available through city offices.
(Ord. 1197, passed 1-3-2005)

' 33.99 PENALTY.

(A) *Generally.* Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to ' 10.99.

(B) *Initiative and referendum.* A person who violates a provision of ' ' 33.01 through 33.10 shall be punished by:

- (1) A fine of not more than \$100;
- (2) Imprisonment in jail not more than 50 days; or

(3) Both.

(1977 Code, ' 1-4) (Ord. 570, passed 6-2-1941)

CHAPTER 34: CITY POLICIES

Section

Employer-Employee Relations

- 34.01 Title
- 34.02 Purpose
- 34.03 Definitions
- 34.04 Rights of city employees
- 34.05 Certification and recognition
- 34.06 Unfair labor practices
- 34.07 Processing unfair labor practices
- 34.08 Representation questions
- 34.09 Representation election
- 34.10 Collective bargaining procedures
- 34.11 Impasse procedures
- 34.12 Peaceful performance of city services
- 34.13 Costs
- 34.14 Severability; time schedule

Procurement and Contract Administration

- 34.20 Title
- 34.21 Purpose
- 34.22 Attorney General's Model Rules do not apply
- 34.23 Local Public Contracting Rules Prescribed
- 34.24 Matters not covered by Local Public Contracting Rules
- Appendix A: Procurement Policy and Procedures, Personal Service Contracting
- 34.99 Penalty

EMPLOYER-EMPLOYEE RELATIONS

' 34.01 TITLE.

This subchapter shall be known as the ACity Employer-Employee Relations Ordinance.@ (1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

34.02 PURPOSE.

The City Council finds and declares the following:

(A) The people of the city have a fundamental interest in the development of harmonious and cooperative relationships between the governing body and its employees;

(B) Recognition by the city of the rights of the employees to organize and full acceptance of the principle and procedure of collective negotiation between the city and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies and the employees;

(C) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards the employees and the public from injury, impairment and interruptions of necessary services and removes certain recognized sources of strife and unrest by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;

(D) It is recognized that the State Collective Bargaining Law found in O.R.S. 243.650 et seq. adequately lays out the general rules and guidelines which this subchapter will attempt to generally incorporate and follow, with the exception of those areas that are determined to be of strictly local concern for the city. Any deviations from the State Collective Bargaining Law are made only after a determination that the matter in question is of local concern;

(E) This subchapter and any agreement pursuant hereto shall not impair any constitutional, common law, charter, statutory or traditional right of responsibility of the city to act unilaterally:

(1) To determine the overall mission of the city as a unit of government;

(2) To maintain and improve the efficiency and effectiveness of city operations;

(3) To determine the services to be rendered, the operations to be performed, the technology to be utilized or the programs to be budgeted;

(4) To determine the overall methods, processes, means and job classifications of personnel by which city operations are to be conducted;

(5) To direct, supervise or hire employees;

(6) To promote, suspend, discipline, discharge for cause, transfer, assign, schedule, retain or lay off employees;

(7) To relieve employees from duties because of lack of work or funds or under conditions where the city determines continued work would be unnecessary;

(8) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement;

(9) To take actions to carry out the missions of the city as the governmental unit in situations of emergency; and

(10) To sign a contract with any group of employees which provides for grievance or arbitration proceedings to protect an employee from arbitrary discipline, transfer or discharge.

(F) Nothing in this subchapter shall be construed to limit the discretion of the city to voluntarily confer with city employees in the process of developing policies to effectuate or implement any of the above enumerated rights.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.03 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROPRIATE BARGAINING UNIT. The unit designated by the Board to be appropriate for the purpose of collective bargaining.

BOARD. The state's Employment Relations Board.

CERTIFICATIONS. Official recognition by the Board or the City Council that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

CITY. The City of Tillamook City.

COLLECTIVE BARGAINING. The performance of the mutual obligation of the city and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations or the negotiation of any agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached and requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

CONFIDENTIAL EMPLOYEE. One who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

EMPLOYMENT RELATIONS. Includes wages, hours and other conditions of employment.

EXCLUSIVE REPRESENTATIVE. The labor organization which, as a result of certification by the Board or recognition by the employer, has the right to be the collective bargaining agent to all employees in an appropriate bargaining unit.

FAIR-SHARE AGREEMENT. An agreement between the city and the recognized or certified bargaining representative of public employees, whereby employees who are not members of the employee organization are required to make in-lieu-of-dues payment to an employee organization. This agreement shall reflect the opinion of the majority of the employees in the bargaining unit.

LABOR DISPUTE. Any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relationship of employer and employee.

LABOR ORGANIZATION. Any organization which has as one of its purposes representing employees in their employment relations with the city.

LEGISLATIVE BODY. The City Council of this city.

MEDIATION. Assistance by an impartial third party in reconciling a labor dispute between the city and the exclusive representative regarding employment relations.

PAYMENT IN-LIEU-OF-DUES. An assessment of all employees in an appropriate bargaining unit to defray the costs for services of the exclusive representative in negotiations and contract administration as agreed to by the parties. This amount shall not exceed normal dues.

PUBLIC EMPLOYEE. An employee of the city but does not include elected officials, persons appointed to serve on boards or commissions, or persons who are confidential employees or supervisory employees.

SUPERVISORY EMPLOYEE. Any individual having authority in the interest of the city to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or having responsibility to direct them or to adjust their grievances to effectively recommend this action if, in connection therewith, the exercise of that authority is not of merely routine or clerical nature but requires the use of independent judgment.

UNFAIR LABOR PRACTICE. The commission of an act designated an unfair labor practice in ' 34.06.
(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976; Ord. 938, passed 1-2-1979)

' 34.04 RIGHTS OF CITY EMPLOYEES.

City employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the city on matters concerning employment relations.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.05 CERTIFICATION AND RECOGNITION.

(A) A labor organization certified by the state's Employment Relations Board or recognized by the city is the exclusive representative of the employees of the city for the purpose of collective bargaining with respect to employment relations. Nevertheless, any agreements entered into involving union security or fair-share agreement must safeguard the rights of non-association for employees based on bona fide religious tenets or teachings of a church or a religious body of which the employee is a member. The employee shall pay an amount of money agreed upon through negotiations to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which the employee would otherwise be required to pay dues. The employee shall furnish written proof to his or her employer that this has been done.

(B) Notwithstanding the provisions of division (A) of this section, an individual employee or group of employees at any time may present grievances to his or her employer and have the grievances adjusted without the intervention of the labor organization, if:

(1) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(2) The labor organization has been given opportunity to be present at the adjustment.

(C) Nothing in this section prevents the city from recognizing a labor organization which represents at least a majority of employees as an exclusive representative of the employees of the city when the Board has not designated the appropriate bargaining unit or when the Board has not certified an exclusive representative in accordance with O.R.S. 243.686.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.06 UNFAIR LABOR PRACTICES.

(A) It is an unfair labor practice for the city or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce employees in or because of the exercise of the rights guaranteed in ' 34.04;

(2) Dominate, interfere with or assist in the formation, existence or administration of any employee organization;

(3) Discriminate in regard to hiring, tenure or any terms or conditions of employment for the purpose of encouraging or discouraging the membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between the city and the exclusive bargaining representative of its employees. If a fair-share agreement has been agreed to by the city and exclusive representative, nothing shall prohibit the deduction of the payment in-lieu-of-dues from the salaries or wages of the employees;

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(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this subchapter;

(5) Refuse to bargain collectively in good faith with the exclusive representative;

(6) Refuse or fail to comply with any provision of this subchapter;

(7) Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign the contract;

(8) Communicate directly or indirectly during the period of negotiations with other than the designated bargaining representative regarding issues subject to the current negotiations. This shall not be construed as to prohibit the processing of grievances, the issuance of a public statement by the fact-finding board or the issuance of press releases by the parties;

(9) To refuse to recognize the rights of the employees to organize and to refuse to recognize the principle and procedure of collective negotiations between the city and public employee organizations; and

(10) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept the award as final and binding upon them.

(B) It is also an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this subchapter;

(2) Refuse to bargain collectively and in good faith with the city if the labor organization is an exclusive representative;

(3) Refuse or fail to comply with any provisions of this subchapter;

(4) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept the award as final and binding upon them; or

(5) Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign the resultant contract.

(C) An injured party may file a written complaint with the Board not later than 180 days following the occurrence of an unfair labor practice.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.07 PROCESSING UNFAIR LABOR PRACTICES.

Whenever a written complaint is filed, alleging that any person has engaged in or is engaging in any unfair labor practice listed in ' 34.06, the Board or its agents shall follow the procedures set out in O.R.S. 243.676.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.08 REPRESENTATION QUESTIONS.

If a question of representation exists, the Board shall follow the procedure outlined in O.R.S. 243.682.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.09 REPRESENTATION ELECTION.

Representation elections shall be conducted and shall be governed by the Board's regulations.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.10 COLLECTIVE BARGAINING PROCEDURES.

The city and the bargaining agent shall provide for and make every reasonable effort to conclude negotiations, including provisions for an effective date, a reopening date and an expiration date at a time to coincide with the period during which the Budget Committee and the City Council shall decide on the operating budget of the city. The process of negotiations shall begin not before January 10 nor later than January 25.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976; Ord. 938, passed 1-2-1979)

' 34.11 IMPASSE PROCEDURES.

(A) If, after a period of negotiation not to exceed the date of February 28, unless otherwise mutually agreed upon, or recognition of an exclusive representative, no agreement has been signed, either party may request that mediation be provided by the State Employment Relations Board or its successor.

(B) Where either party has determined that the parties have failed to achieve agreement through negotiation, either party may request from the Employment Relations Board assistance in resolving the labor dispute according to the following schedule:

(1) Mediation shall be provided by the State Conciliation Service as provided by O.R.S. 662.405 to 662.455;

(2) If the labor dispute has not been settled after 15 calendar days after the mediator has first met with both parties, but in no case later than April 15, the negotiations shall be deemed in a state of impasse. Each party shall submit to the other his, her or their final unresolved issue(s) in writing within five working days following either of the above time limits, whichever occurs first. The final offer shall include all issues which have been resolved as well as all issues which have been the subject of negotiations but not resolved. Each issue shall be separately stated; and

(3) Within ten working days following the time limits in division (B)(2) above, the final unresolved issues, with all attachments, shall be submitted to the City Council for final determination or the city, at its option, may submit any or all of either party's unresolved issue(s) to the voters in a special city election to be held within 45 days from the date of submission of the separately stated unresolved issue or issues as the case may be. The election ballot shall specify the last offer of the rejecting party and, if involving wages, the dollar amount of each party's last offer over and above or below the current year's operating budget amount for those specific items, and also state the percentage of increase or decrease over the current operating budget. The decision of the voters shall be final and binding upon the parties.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976; Ord. 938, passed 1-2-1979)

' 34.12 PEACEFUL PERFORMANCE OF CITY SERVICES.

(A) In order that the vital performance of city services can be maintained, no employee shall strike or recognize a picket line of a labor organization while in the performance of his or her official duties.

(B) The following shall apply.

(1) Participation by any employee in a strike or work stoppage is unlawful and shall subject the employee to disciplinary action, up to and including discharge.

(2) No employee organization, its representatives or members shall engage in a strike or work stoppage of any kind.

(3) If a certified employee organization, its representatives or members engage in a strike or work stoppage of any kind, in addition to any other lawful remedies or disciplinary actions, the City Council may suspend or revoke the recognition or certification granted to the employee organizations and prohibit the use of bulletin boards, prohibit the use of city facilities and prohibit access to former work or duty stations by the organization.

(4) As used in this section, **STRIKE** or **WORK STOPPAGE** means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful performance of the duties of employment for the purpose of influencing or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

(5) The city may petition the appropriate courts for an injunction or other appropriate relief if a strike, work stoppage or recognition of a picket line in violation of this section is occurring or is about to occur. The city may also hire new permanent or temporary employees or transfer other city employees to perform the services and duties of these employees engaged in a strike or work stoppage in violation of this section.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

' 34.13 COSTS.

Costs of any procedures as outlined in this subchapter, including but not limited to bargaining unit determination, shall be borne equally by the city and bargaining unit. Any labor organization seeking certification as a bargaining agent shall be required to demonstrate financial responsibility to meet the requirements of this section to the satisfaction of the city. The city shall furnish meeting space when requested for these proceedings without charge.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976; Ord. 938, passed 1-2-1979)

' 34.14 SEVERABILITY; TIME SCHEDULE.

It is the intent of the City Council that only the portion of the time schedule set herein for consultation, negotiation and impasse procedures that can be met in the forthcoming budget process shall apply.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

PROCUREMENT AND CONTRACT ADMINISTRATION**‘ 34.20 TITLE.**

This subchapter shall be known as the “Procurement and Contract Administration Ordinance.” (Ord. 1284, passed 12-16-2014)

‘ 34.21 PURPOSES.

The purpose of this subchapter is to create and express a set of simple public contracting policies and processes for the city of Tillamook, Oregon (hereafter “City”), to achieve effective outcomes at optimal values in contracts for goods, services and public improvements with those persons who do business with the City. These policies and processes should instill public confidence through ethical and fair dealing, honesty and good faith in the City and in those who do business with City. These policies and processes should promote impartial and open competition, efficient use of City resources, and modern, evolving procurement practices.

‘ 34.22 OREGON ATTORNEY GENERAL’S MODEL RULES DO NOT APPLY.

The model rules adopted by the Oregon Attorney General on or before this date for public contracting by local contracting agencies do not apply to the city of Tillamook, Oregon.

‘ 34.23 LOCAL PUBLIC CONTRACTING RULES PRESCRIBED.

The initial local public contracting policies and procedures which apply to public contracts with the City are expressed in **Appendix A** entitled “Procurement Policies and Procedures for the City of Tillamook, Oregon”, attached and incorporated here by reference. The Board, consistent with section 2 above, is delegated the authority to amend these rules, and to enact and amend future rules, by resolution following the due process of a public notice and public hearing for this purpose. Such amendment shall be as needed. However, the Board shall review its rules each time the Oregon Attorney General (“AG”) modifies the AG’s model rules to determine whether the Board should modify the Board’s rules to ensure compliance with state statutory changes. Actions by the Board shall be designated as “BY THE TILLAMOOK LOCAL CONTRACT REVIEW BOARD” and signed by the presiding member or designee. Actions pursuant to authority delegated by the Tillamook Local Contract Review Board shall be signed and subscribed “Agent for the Tillamook Local Contract Review Board”.

‘ 34.24 MATTERS NOT COVERED BY LOCAL PUBLIC CONTRACTING RULES.

Those model public contracting rules adopted by the Oregon Attorney General now and in the

future covering public contracting procedures and/or criteria which are not superseded by City's "Procurement Policies and Procedures for the city of Tillamook, Oregon" shall apply to City contracts, subject to the Board's authority in Section 4 to enact local public contracting policies and procedures appropriate to City contracts to replace the AG's rules.

APPENDIX A

SECTION I:

PROCUREMENT POLICY AND PROCEDURES FOR THE CITY OF TILLAMOOK

A. Policies and Procedures: Procurements, contracts and purchases for goods and services and personal services shall be made in the following manner:

(1) General Purchases. The City Manager, Recorder/Treasurer, Department Heads, or other designated individuals delegated in writing by the City Manager may make purchases with petty cash, City VISA card or City check not to exceed \$1,000.00, any amount greater than this will require approval. Every effort shall be made to consolidate purchases among all departments to ensure that the price obtained is the most advantageous to the City. To eliminate the potential for abuse or misuse, the City Manager shall request that the City Recorder make periodic audits of the petty cash fund and/or VISA or Check purchases and report the results to the City Manager or the Designated Alternate.

(2) Small Procurements. A highly informal procedure for small procurements, contracts, and purchases of goods and services, personal services including architectural, engineering, land surveying and related services and public improvement including minor alterations, repair and maintenance involving a single project and a dollar amount of \$5,000 or less (ORS 279B.065). The Agent for the Tillamook Local Contract Review Board, otherwise known hereinafter as the "Contracting Agency", shall informally solicit quotation(s) orally, by telephone, or in writing and make direct selection and award. Procurements may not be fragmented or artificially divided to be included in small procurements procedures.

(a) A written transaction file shall be kept with abstracts of invitations made, offers received, and awards made. Within one fiscal year, no individual contractor may be awarded contracts, in the aggregate of \$30,000 without formal competitive bidding.

(b) Subject to the provisions of subsections F through I below, Personal Service Contract requirements are detailed in Section II.

(3) Intermediate Procurements. For Intermediate procurements, contracts and purchases for goods and services (including minor alterations, ordinary repair and maintenance) and personal service contracts including architectural, engineering, land surveying and related services in excess of \$5,000 but less than \$150,000.00 (ORS 279B.070), the Contracting Agency shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. A written record will be kept of all quotations and proposals, including related communications. The Tillamook Local Contract Review Board may make award to the contractor whose quote or proposal best serves

the interests of the City, taking into account but not limited to price, experience, expertise, product functionality, suitability and contractor responsibility.

(4) For procurements, contracts and purchases for goods and services including minor alterations, ordinary repair and maintenance and personal service contracts including architectural, engineering, land surveying and related services in excess of \$150,000.00 competitive sealed bidding procedures will be made for either competitive quotes or competitive Qualification Based proposals with contract award being made by the Contracting Review Board.

- a) Should three quotes or Qualification Based proposals from contractors not be available, award shall be made with a written record and details of the efforts made to obtain the sources maintained. Procurements will not be artificially divided or fragmented to meet the informal solicitations procedures.
- b) All procurement methods shall comply with the statutory requirements.
- c) Subject to the provisions of subsections F through I below, Personal Service Contract requirements are detailed in Section II.

B. Procurement and contracts of Public Improvement Contracts for construction, maintenance and repair of City property shall be made in the following manner:

(1) For contracts and procurements valued at not more than \$150,000 the Contracting Agency shall follow the procedures described in Section I. A (3) above for "Intermediate Procurement", by soliciting informal competitive price quotes or competitive proposals from at least three prospective contractors, with contract award being granted to the contractor's quote or proposal that best meets the needs of the City.

(2) For contracts and procurements greater than \$30,000.00, but not to exceed \$100,000, or not to exceed \$50,000 in the case of contracts for transportation projects, formal bidding procedures shall be used for competitive quotes or proposals. The Contract Review Board shall make the award to the contractor whose quotation or proposal best meets the needs of the City, with a written record maintained of all quotations and proposals, including related communications.

(3) For contracts and procurements in excess of \$100,000, and \$50,000 for transportation projects, competitive bidding procedures will be used in accordance with the provisions of ORS 279C.360, 365, and 370.

C. Sole Source Procurement. In accordance with the provisions of ORS 279B.075 and when authorized by the Contract Review Board, the Contracting Agency may award a contract for goods and services without competition when a determination, in writing, is made that the goods or services, or class of goods or services are available from only one source. To the extent reasonably practical, the Contracting Agency shall negotiate with the sole source to obtain contract terms advantageous to the City. The determination of sole source must be based on written findings that may include:

(I) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;

- (2) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- (3) That the goods or services are for use in a pilot or an experimental project;
- (4) Or other findings that support the conclusion that the goods or services are available from only one source.

D. Emergency Procurements. Public improvement contracts, contracts for goods and services and contracts for personal services may be exempted from competitive bidding if the Contracting Agency head, or designee, or Contract Review Board authorizes a defined "emergency" procurement, with certain documentation in accordance with ORS 279B.080. Should an emergency procurement be required and conditions require prompt execution of a contract, documentation will be made of all transactions, including but not limited to, the nature of the emergency, method used to select the contractor, and scope and price of the contract.

E. Special Procurement Contracts. Special procurements may be made without competitive solicitation as provided in the ORS 279B.085.

F. Partial Listing of Procurement Options. The City reserves the right to:

- (1) cancel, reject, or delay all invitations for bids or requests for proposal in accordance with ORS 279B.100.
- (2) prequalify prospective bidders and proposers in accordance with ORS 279B.120, and
- (3) enter into Contract Negotiations in the event all responsive bids exceed the contracting agency's cost estimate with the lowest apparent bidder in accordance with ORS 279C.340.

G. Prevailing Wage. Contracts for public improvements for \$50,000.00 or less are not subject to Prevailing Wage Rates. In such cases, ORS 279C.800-870 does not apply.

H. Contract Amendments. The Contracting Agency is authorized to amend the original contract amount up to but not to exceed 15 percent of the original contracting price. Prior approval of the Contract Review Board is required for amendments greater than 15 percent. However, if the original contract was awarded through the competitive bidding process and a fixed unit price was established, the contract amount can only be amended by a negotiated change in contract scope or other previously unforeseen requirements.

I. Conflict of Interest. Employees, officers, or agents of the City shall not participate in the selection, negotiation, administration or award of any contract of the City if a conflict of interest, real or apparent, would be involved. Included in this prohibition are: immediate family members, his or her partner, an organization which employs or is about to employ any of aforementioned, or anyone who has a financial or other interest in the firm selected for award. City officers, employees, or agents are prohibited from soliciting, accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

**SECTION II:
PERSONAL SERVICE CONTRACTING POLICY FOR THE CITY OF TILLAMOOK**

A. Personal services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Contracting Agency shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

(1) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

- a. Specialized experience in the type of work to be performed.
- b. Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
- c. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and
- d. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
- e. Any other factors relevant to the particular contract.
- f. The City reserves the right to enter into direct contracts for services for architects, engineers and land surveyors in accordance with ORS 279C.115 (2).
- g. On contracts where the construction value is greater than \$900,000 and 10% or more of the funding is coming from State sources, Qualification Based (QBS) selection of architectural, engineering or land surveyor services in accordance with ORS 279C.11 0 will apply.

(2) The selection procedures described in this section may be waived by the Contracting Agency, at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.

(3) Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law that require the city to utilize a different selection or contracting procedure.

(4) Personal service contracts are those exclusively for the rendering of services where the particular skill or experience of the contractor is of the essence, or which involves a relation of special trust and confidence between the City and the contractor.

(5) Personal service contracts shall not be used to engage persons who would be deemed City employees, rather than independent contractors.

(6) All personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance.

(7) Prior to selection of a contractor, the City Recorder shall verify that the insurance requirements for particular services protect the City's interests.

B. The Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate City employee, or by an interview committee. Following a review of the qualifications and interviews, where conducted, of the interested prospective contractor, the Tillamook Local Contract Review Board shall select the prospective contractor, and the Contracting Agency shall prepare a personal service contract based upon model contract provisions.

' 34.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to ' 10.99.

(B) Enforcement and compliance with the provisions of ' ' 34.01 through 34.14 shall be by one of the following two methods:

(1) Suit in equity brought in the Circuit Court for this county by the city or by a duly elected bargaining representative against any person or party who it is claimed has violated this subchapter; or

(2) A person violating any of the provisions of this subchapter shall, upon conviction in the Municipal Court, pay a fine of \$500 and pay the costs of the proceedings. Each day's violation of a provision of this subchapter shall constitute a separate offense.

(1977 Code, ' 1-13) (Ord. 849, passed 5-15-1976)

CHAPTER 35: FINANCES; TAXES AND FEES

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FEES

35.001 FRANCHISE FEES ON WATER/SEWER UTILITIES.

This section provides the process to be used to administer and collect a franchise fee on city-owned water and sanitary sewer utilities.

(A) *Fee established.* There is hereby established a franchise fee upon municipally owned and operated water and sanitary sewer utilities operating within the public rights-of-way in and outside the city.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GROSS REVENUE. Includes any revenue earned within and without the city (after adjustment for the write-off of uncollectable accounts) from the sale of water and sanitary sewer disposal and/or treatment services. The term does not include proceeds from the sale of bonds or other evidence of indebtedness, interest earnings, system development charges and connection fees, and other related fund activities.

MUNICIPAL UTILITY. Includes only municipally owned and operated water and sanitary sewer facilities operating within and without the city.

(C) *Fees and payment.*

(1) *Basis for fee calculation.* Those city departments charged with the responsibility of operating a municipal utility as defined herein shall pay a fee of 2% of gross revenues received by the utility to the city General Fund for the privilege of operating within city-owned rights-of-way.

(2) *Calculation fee.* The municipal utility shall compute the fee by multiplying the applicable percentage by the gross revenues received during the reporting period.

(3) *Payment of fees.* Fees payable by City Water and Sanitary Sewer Departments shall be paid monthly, at the end of each calendar month of operations. The fee shall be paid to the City Treasurer.

(D) *Report of gross revenues.* Concurrent with payment of the fee, the municipal utility shall file with the City Treasurer a report of the gross revenues of the utility setting forth the revenues according to their accounting subdivisions and any deductions claimed for the period upon which the fee is

computed.

(E) *Effective date.* This is section retroactive to July 1, 2004.
(Ord. 1174, passed 5-6-2002; Ord. 1195, passed 9-20-2004)

TRANSIENT ROOM TAX

35.015 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCRUAL ACCOUNTING. The operator enters the rent due from a transient on his or her records when the rent is earned, whether or not it is paid.

CASH ACCOUNTING. The operator does not enter the rent due from a transient on his or her records until rent is paid.

CITY COUNCIL. The City Council of this city.

CONFERENCE CENTER. A facility that is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and meets current membership criteria of the International Association of Conference Centers.

CONVENTION CENTER. A new or improved facility that is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and any other associated space, including but not limited to banquet facilities, loading areas and lobby and registration areas; has a total meeting room and ballroom space between one-third and one-half of the total size of the center's exhibition space; generates a majority of its business income from tourists; has a room-block relationship with the local lodging industry; and is owned by a unit of local government, a governmental agency or a nonprofit organization.

HOTEL. Any structure or any portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, and also means space in mobile home or trailer parks, or similar structure or space or portions thereof so occupied; provided the occupancy is for less than a 30-day period.

LIEN. A charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law.

OCCUPANCY. The use or possession, or the right to the use or possession, for lodging or

sleeping purposes, of any room or rooms in a hotel or space in a mobile home or trailer park or portion thereof.

OPERATOR. The person who is the proprietor of the hotel in any capacity. Where the **OPERATOR** performs his or her functions through a managing agent of any type or character other than an employee, local site manager, and/or managing agent shall also be deemed an **OPERATOR** for the purposes of this subchapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this subchapter by either the principal or the managing agent shall be considered to be compliance by both.

PERSON. Any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

RENT. The consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

RENT PACKAGE PLAN. The consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this subchapter shall be the same charge made for rent when consideration is not a part of a package plan. The amount applicable to rent for determination of transient room tax under this subchapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and taking into consideration the charge for rent when the space is rented separately and not included in a package plan.

TAX. Either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he or she is required to report his or her collections.

TAX ADMINISTRATOR. The City Manager of this city.

TOURISM. Economic activity resulting from tourists.

TOURISM PROMOTION. Any of the following activities: advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists; conducting strategic planning and research necessary to stimulate future tourism development; operating tourism promotion agencies; and marketing special events and festivals designed to attract tourists.

TOURISM PROMOTION AGENCY. Includes an incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis. A nonprofit entity that manages tourism-related economic development plans, programs and projects. A regional or statewide association that represents entities that rely on tourism-related business for more than 50% of their total income.

TOURIST. A person who, for business, pleasure recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different

community that is separate, distinct from and unrelated to the person’s community of residence, and that trip requires the person to travel more than 50 miles from the community of residence, or includes an overnight stay.

TRANSIENT. Any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a **TRANSIENT** checks out of the hotel shall not be included in determining the 30-day period if the **TRANSIENT** is not charged rent for that day by the operator. Any individual so occupying space in a hotel shall be deemed to be a **TRANSIENT** until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a **TRANSIENT**, uninterrupted periods of time extending both prior and subsequent to the effective date of this subchapter may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in the month, shall not be deemed a **TRANSIENT**.

VISITOR INFORMATION CENTER. A building, or portion of a building, the main purpose of which is to distribute or disseminate information to tourists.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977; Ord. 1196, passed 10-4-2004; Ord. 1289, passed 5-5-2014)

' 35.016 TAX IMPOSED.

For the privilege of occupancy in any hotel, on or after August 1, 2010, each transient shall pay a tax in the amount of 10% of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall collect the tax for each transient and shall enter the tax on his or her records when rent is collected if the operator keeps his or her records on the cash accounting basis, and when earned if the operator keeps his or her records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishings of rooms, accommodations and space occupancy in mobile home parks or trailer parks.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977; Ord. 1117, passed 9-3-1991; Ord. 1196, passed 10-4-2004; Ord. 1250, passed 6-21-2010)

' 35.017 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.

(A) Every operator renting rooms or space for lodging or sleeping purposes in this city, the occupancy of which is not exempted under the terms of this subchapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.

(B) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.

(C) The Tax Administrator shall enforce provisions of this subchapter and shall have the power to adopt rules and regulations not inconsistent with this subchapter as may be necessary to aid in the enforcement.

(D) For rent collected on portions of a dollar, fractions of a penny shall not be remitted. (1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.018 OPERATOR'S DUTIES.

Each operator shall collect the tax imposed by this subchapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, that it will not be added to the rent or that, when added, any part will be refunded, except in the manner provided by this subchapter.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.019 EXEMPTIONS.

No tax imposed under this subchapter shall be imposed upon:

(A) Any occupant for more than 30 successive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in the month, shall not be deemed a transient).

(B) Any occupant whose rent is of a value less than \$2 per day.

(C) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home/or home for aged people, or to a public institution owned and operated by a unit of government.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.020 REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.

(A) Every person engaging in or about to engage in business as an operator of a hotel in this city shall register with the Tax Administrator on a form provided by him or her. Operators engaged in business at the time this subchapter is adopted must register not later than 30 calendar days after passage of this subchapter. Operators starting business after this subchapter is adopted must register within 15 days after commencing business. The privilege of registration after the date of imposition of the tax shall not relieve any person from the obligation of payment or collection of tax, regardless of registration. Registration sets forth the name under which the operator transacts or intends to transact business, the location of his or her place or places of business, and any other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate

thereof for each additional place of business or each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(B) This certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued; and

(4) The following: AThis Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Lodgings Tax Ordinance of the city by registration with the Tax Administrator for the purpose of collecting from transients the lodgings tax imposed by the city and remitting the tax to the Tax Administrator. This certificate does not authorize any person to conduct an unlawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the city. This certificate does not constitute a permit.®

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.021 DUE DATE; RETURNS AND PAYMENTS.

(A) The tax imposed by this subchapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of taxes collected by any operator are due and payable to the Tax Administrator on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The Tax Administrator has authority to classify and/or district the operators for determination of applicable tax periods and shall notify each operator of the due and delinquent dates for the operator's returns. The initial return under this subchapter may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.

(B) On or before the fifteenth day of the month following each quarter of collection, a return for the preceding quarter's tax collections shall be filed with the Tax Administrator. The return shall be filed, in a form as the Tax Administrator may prescribe, by every operator liable for payment of tax.

(C) Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for that period, and an explanation in detail of any discrepancy between the amounts and the amount of rents exempt, if any.

(D) The person required to file the return shall deliver the return, together with the remittance of

the amount of the tax due, to the Tax Administrator at his or her office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(E) For good cause, the Tax Administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of 0.5% per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this subchapter.

(F) The Tax Administrator, if he or she deems it necessary in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.022 PENALTIES AND INTEREST.

(A) *Original delinquency.* Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this subchapter prior to delinquency, shall pay 10% of the amount of tax due in addition to the amount of the tax.

(B) *Continued delinquency.* Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed. After the first 30 days of delinquency, in addition to other remedies, fines, and fees, the operator may be cited into Municipal Court. Each day subsequent to the 31 days shall be considered a separate violation. Penalties to be set by resolution. Failure to pay any tax, fine, or fee after 91 days may result in the revocation of business licences in addition to all other tax, fees, fines, and penalties.

(C) *Fraud.* If the Tax Administrator determines that the nonpayment of any remittance due under this subchapter is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions (A) and (B) of this section.

(D) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this subchapter shall pay interest at the rate of 1% per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(E) *Penalties merged with tax.* Every penalty imposed and any interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

(F) *Petition for waiver.* Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the City Council for waiver and refund of the penalty or any portion thereof; and the City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. (1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977; Ord. 1289, passed 5-5-2014)

' 35.023 DEFICIENCY DETERMINATIONS; EVASION; OPERATOR DELAY.

(A) *Deficiency determinations.* If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in ' 35.022.

(1) In making a determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in ' 35.022.

(2) The Tax Administrator shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his or her address as it appears on the records of the Tax Administrator. In case of service by mail of any notice required by this subchapter, it shall be served by mailing the notice by registered mail, postage prepaid, return receipt requested.

(3) Except in the case of fraud or intent to evade this subchapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(B) *Fraud; refusal to collect; evasion.* If any operator shall fail or refuse to collect the tax or to make within the time provided in this subchapter any report or remittance of the tax or any portion thereof required by this subchapter, or makes a fraudulent return or otherwise willfully attempts to evade this subchapter, the Tax Administrator shall proceed in a manner as he or she may deem best to obtain the facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this subchapter from any operator who has failed or refused to collect the same and to report and remit the tax, he or she shall proceed to

determine and assess against the operator the tax, interest and penalties provided for by this subchapter. In case this determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. The determination and notice shall be made and mailed within three years of the discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file the return. Any determination shall become due and payable upon receipt of notice and shall become final within 20 days after the Tax Administrator has given notice thereof; provided, however, the operator may petition for redemption refund if the petition is filed before the determination becomes final as herein provided.

(C) *Operator delay.* If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, or if any determination will be jeopardized by delay, he or she shall thereupon make a determination of the tax, or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay the determination to the Tax Administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of the determination, if the petition is filed within 20 days from the date of service of notice by the Tax Administrator.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.024 REDETERMINATIONS.

(A) Any person against whom a determination is made under ' 35.023, or any person directly interested, may petition for a redetermination and redemption and refund within the time required in ' 35.023. If a petition for redetermination and refund is not filed within the time required in ' 35.023, the determination becomes final at the expiration of the allowable time.

(B) If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her 20 days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(C) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing; if an increase is determined, the increase shall be payable immediately after the hearing.

(D) The order or decision of the Tax Administrator upon a petition for redetermination and refund becomes final 20 days after service upon the petitioner of notice thereof, unless appeal of the order or decision is filed with the City Council within 20 days after the service of the notice.

(E) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.025 SECURITY FOR COLLECTION OF TAX.

(A) The Tax Administrator, whenever he or she deems it necessary to ensure the compliance with this subchapter, may require the operator subject thereto to deposit with him or her that security in the form of cash, bond or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average quarterly liability for the period for which he or she files returns, determined in a manner as the Tax Administrator deems proper, or \$5,000, whichever amount is lesser. The amount of security may be increased or decreased by the Tax Administrator subject to limitations herein provided. The operator has a right to appeal to the City Council any decision of the Tax Administrator made pursuant to this section. The operator's right to appeal is pursuant to ' 35.030.

(B) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three years after any determination becomes final, the Tax Administrator may bring any action in the courts of this state, any other state or of the United States, in the name of the city, to collect the amount delinquent, together with penalties and interest. (1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.026 LIEN.

The tax imposed by this subchapter, together with the interest and penalties herein provided and the filing fees paid to the County Clerk of this county, attorneys' fees and advertising costs which may be incurred when same becomes delinquent as set forth in this subchapter, shall be and, until paid, remain a lien from the date of its recording with the County Clerk of this county, and superior to all subsequent recorded liens on all real and/or tangible personal property used in the hotel of an operator within the city and may be foreclosed on and sold as may be necessary to discharge the lien if the lien has been recorded with the County Clerk. Notice of the lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of the tax, interest and penalty and shall be recorded with the County Clerk and a copy sent to the delinquent operator. The personal property subject to the lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing same at public auction after ten days' notice, which means one publication in a newspaper published in the city. Any lien for taxes shown on the records of the proper county official shall, upon payment of all taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the city, and shall have a receipt and interest thereof have been paid and that the lien is hereby released, and the record of lien is satisfied. (1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977; Ord. 1173A, passed 4-15-2002)

' 35.027 REFUNDS.

(A) *Refunds by the city to the operator.* Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this subchapter, it may be refunded; provided, a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within one year from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid

may be refunded or may be credited on any amount then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to the operator, his or her administrators, executors or assignees.

(B) *Refunds by city to transient.* Whenever the tax required by this subchapter has been collected by an operator and deposited by operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within one year from the date of payment.

(C) *Refunds by operator to tenant.* Whenever the tax required by this subchapter has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 days without interruption, the operator shall refund to the tenant the tax previously collected by the operator from that tenant as a transient. The operator shall account for the collection and refund to the Tax Administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.028 COLLECTION FEE.

Every operator liable for collection and remittance of the tax imposed by this subchapter may withhold 5% of the net tax herein collected, to cover the operator's expense in collection and remittance of the tax.

(1977 Code, ' 6-13) (Ord. 901, passed 8-1-1977)

' 35.029 ADMINISTRATION.

(A) *Special fund.* The Tax Administrator shall deposit all money collected pursuant to this subchapter within the Transient Hotel/Motel Tax Fund. One-half of the revenue received shall be a General Fund resource. In times of emergency or significant economic downturn, the City Council may modify, i.e., increase this resource amount to support General Fund activities in the current fiscal year. Furthermore, the City Council may cause the temporary suspension of funds, except for public police protection, allocated to the following activities in the current fiscal year as well. Absent modification/suspension by the City Council, the remaining one-half is to be used for the following activities within the city:

- (1) Operation/maintenance of public parking;
- (2) Parking lot purchase/construction;
- (3) Tourism promotion advertising;
- (4) Economic development;

- (5) Public police protection; and
- (6) Beautification.

(B) *Two percent tax increase.* House Bill 2267, passed by the 2003 State Legislature, changed the law regarding transient room effective July 2, 2003, establishing a set formula for the allocation of new or increased local lodging taxes. As of November 4, 2004, the transient room tax shall be increased by 2% thus increasing it from 7% to 9%. The additional 2% increase shall be utilized in the following manner:

(1) Seventy percent of the increased transient room tax shall be used for tourism promotion or tourism-related facilities. A ***TOURISM-RELATED FACILITY*** means real property that has a useful life of ten or more years and that is used to support tourism and to accommodate tourist activities. Tourism-related facility includes a conference center, convention center and visitor information center.

(2) Thirty percent of the increased transient room tax is unrestricted and may be used to fund city services, and/or it may be used to fund the maintenance and repair of tourism-related facilities.

(C) *One percent tax increase.* As of August 1, 2010, the transient room tax shall be increased an additional 1% thus increasing it from 9% to 10%. This additional 1% increase shall be utilized in the following manner: 100% of the increase in transient room tax shall be used to solely support the Tillamook Area Chamber of Commerce.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977; Ord. 1118, passed 9-3-1991; Ord. 1190, passed 4-19-2004; Ord. 1196, passed 10-4-2004; Ord. 1250, passed 6-21-2010)

' 35.030 APPEALS TO CITY COUNCIL.

Any person aggrieved by any decision of the Tax Administrator may appeal to the City Council by filing notice of appeal with the Tax Administrator within 20 days of the serving or the mailing of the notice of the decision given by the Tax Administrator. The Tax Administrator shall transmit the notice of appeal together with the file of the appealed matter, to the Council, who shall fix a time and place for hearing the appeal from the decision of the Tax Administrator. The Council shall give the appellant not less than 20 days' written notice of the time and place of hearing of the appealed matter. Action by the Council on appeals shall be decided by a majority of the members of the Council present at the meeting where the appeal is considered.

(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

' 35.031 VIOLATIONS.

It is unlawful for any operator or other person so required to fail or refuse to register as required herein; to furnish any return required to be made; fail or refuse to furnish a supplemental return or other data required by the Tax Administrator; or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or

evade the determination of any amount due required by this subchapter.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977) Penalty, see ' 35.999

' **35.032 EFFECTIVE DATE.**

This subchapter shall become effective at 12:01 a.m. June 23, 1977.
(1977 Code, ' 6-13) (Ord. 893, passed 5-23-1977)

MOTOR VEHICLE FUEL TAX

' **35.045 TITLE.**

This subchapter shall be known as the ACity Motor Vehicle Fuel Tax Ordinance.@
(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' **35.046 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AIRCRAFT FUEL. Any gasoline and any other inflammable or combustible gas or liquid by whatever name the gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the city, is for purposes other than the propulsion of aircraft.

CITY. Tillamook City, a political subdivision of this state.

DEALER. Any person who:

(1) Imports, or causes to be imported, motor vehicle fuel for sale, use or distribution in an after the same reaches the city. ***DEALER*** does not include any person who imports into the city motor vehicle fuel in quantities of 200 gallons or less purchased from a supplier who is licensed as a dealer hereunder, and who assumes liability for the payment of the applicable license tax to the city;

(2) Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the city; or

(3) Acquires in the city for sale, use or distribution in the city, motor vehicle fuels with respect to which there has been no license tax previously incurred.

DISTRIBUTION. In addition to its ordinary meaning, the delivery of motor vehicle fuel by a

dealer or subdealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale, or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer or subdealer.

HIGHWAY. Every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel within city limits.

MOTOR VEHICLE. All vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

MOTOR VEHICLE FUEL. Includes gasoline and any other flammable or combustible gas or liquid, by whatever name such as gasoline, gas, diesel or liquid is sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the city, is for purposes other than the propulsion of motor vehicles upon the highways.

PERSON. Includes every natural person, association, firm, partnership, corporation or the United States.

SERVICE STATION. Includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

SUBDEALER. Includes every person other than a dealer engaging in the business of handling motor vehicle fuel for sale and distribution within the city, when the fuel is delivered by dealers with business addresses outside city limits.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.047 TAX IMPOSED.

A business license tax is hereby imposed on every dealer and subdealer. The tax imposed shall be paid monthly to the city. The city may delegate to any department of the city enforcement of any portion or all of this subchapter.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.048 AMOUNT AND PAYMENT.

(A) Subject to divisions (B) and (C) of this section, in addition to any fees or taxes otherwise provided for by law, every dealer and subdealer engaging in his or her own name, or in the name of others, or in the name of his or her representatives or agents in the city, in the sale, use or distribution of motor vehicle fuel or withdrawal of motor vehicle fuel for sale, use or distribution within areas in the city, in the sale of motor vehicle fuel or gasoline as the case may be, shall:

(1) Not later than the twenty-fifth day of each calendar month, render a statement to the city of all motor vehicle fuel sold, used, distributed or so withdrawn by him or her in the city; and

(2) Pay a license tax computed on the basis of \$0.03 per gallon of the motor vehicle fuel so sold, used, distributed or withdrawn as shown by the statement in the manner and within the time provided in this subchapter.

(B) In lieu of claiming refund of the tax paid as to motor vehicle fuel consumed by the dealer or subdealer in non-highway uses as provided in this chapter, or of any prior erroneous payment of license tax made to the city by the dealer or subdealer, the dealer or subdealer may show the motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The license tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982; Ord. 1177, passed 8-5-2002; Ord. 1223, passed 9-17-2007; Ord. 1234, passed 7-21-2008)

' 35.049 LICENSE REQUIREMENTS.

No dealer or subdealer shall sell, use or distribute any motor vehicle fuel until he or she has secured a dealer's license as required herein.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.050 LICENSE APPLICATIONS AND ISSUANCE.

(A) Every person, before becoming a dealer or subdealer in motor vehicle fuel in this city, shall make an application to the city for a license authorizing the person to engage in business as a dealer or subdealer.

(B) Applications for the license must be made on forms prescribed, prepared and furnished by the city.

(C) The applications shall be accompanied by a duly acknowledged certificate containing:

(1) The business name under which the dealer or subdealer is transacting business within the city;

(2) The place of business and location of distributing stations in the city; and

(3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers and registered agent.

(D) The application for a motor vehicle fuel dealer's or subdealer's license having been accepted for filing, the city shall issue to the dealer or subdealer a license in a form as the city may prescribe to transact business in the city. The license so issued is not assignable, and is valid only for the dealer or

subdealer in whose name issued.

(E) The city shall keep and file all applications with an alphabetical index thereof, together with a record of all licensed dealers and subdealers.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.051 FAILURE TO SECURE LICENSE.

(A) If any dealer or subdealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the license required by ' 35.050, the license tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used. Each day of operation without a license shall be deemed a separate offense.

(B) The city shall proceed forthwith to determine from the best available sources the amount of the tax, and it shall assess the tax in the amount found due, together with a penalty of 100% of the tax, and shall make its certificate of the assessment and penalty. In any suit or proceeding to collect the tax or penalty or both, the certificate is prima facie evidence that the dealer or subdealer therein named is indebted to the city in the amount of the tax and penalty therein stated.

(C) Any tax or penalty so assessed may be collected in the manner prescribed in ' 35.055 with reference to delinquency in payment of the tax or by action at law.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982) Penalty, see ' 35.999

' 35.052 REVOCATION OF LICENSE.

The city shall revoke the license of any dealer or subdealer refusing or neglecting to comply with any provision of this subchapter. The city shall mail by registered mail, addressed to the dealer or subdealer at his or her last known address appearing in the files of the city, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if, within ten days from the mailing of the notice, the dealer or subdealer has not made good his, her or its default or delinquency.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.053 CANCELLATION OF LICENSE.

(A) The city may, upon written request of a dealer or subdealer, cancel any license issued to the dealer or subdealer, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the city ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer or subdealer, the city may cancel the license of the dealer or subdealer upon investigation after 30 days' notice has been mailed to the last known address of the

dealer or subdealer.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.054 REMEDIES CUMULATIVE.

Except as otherwise provided in ' ' 35.055 and 35.057, the remedies provided in ' ' 35.051, 35.052 and 35.053 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this subchapter.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.055 PAYMENT OF TAX AND DELINQUENCY.

(A) The license tax imposed by ' ' 35.047 and 35.048 shall be paid on or before the twenty-fifth day of each month to the city, which upon request, shall receipt the dealer or subdealer therefor.

(B) Except as provided in division (D) of this section, to any license tax not paid as required by division (A) of this section, there shall be added a penalty of 1% of the license tax.

(C) Except as provided in division (D) of this section, if the tax and penalty required by division (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of 10% shall be paid in addition to the penalty provided for in division (B) of this section.

(D) If the city determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by divisions (B) and (C) of this section shall be waived. Penalties imposed by this section shall not apply when the penalty provided in ' 35.051 has been assessed.

(E) If any person fails to pay the license tax or any penalty provided for by this subchapter, the amount thereof shall be collected from the person for the use of the city. The city shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(F) No dealer who collects from any person the tax provided for herein shall knowingly and willfully fail to report and pay the same to the city as required herein.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.056 MONTHLY STATEMENT OF DEALER.

Every dealer or subdealer in motor vehicle fuel shall render to the city on or before the twenty-fifth day of each month, on a form prescribed, prepared and furnished by the city, a signed statement of the number of gallons of motor vehicle fuel sold, distributed or used by him, her or them during the

preceding calendar month. The statement shall be signed by one of the principal officers, or by an authorized agent in the case of a corporation; or by the managing agent or owner in the case of a firm or association.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.057 FAILURE TO FILE MONTHLY STATEMENT.

If any dealer or subdealer, except one subject to ' 35.051, fails to file the report required by ' 35.056, the city shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed or used by the dealer or subdealer for the period unreported, and that determination shall be prima facie evidence of the amount of the fuel sold, distributed or used. The city immediately shall assess the license tax in the amount so determined, adding thereto a penalty of 10% for failure to report. The penalty shall be cumulative to other penalties provided in this subchapter. In any suit brought to enforce the rights of the city under this section, the certificate of the city showing the amount of tax, penalties and costs unpaid by any dealer or subdealer, and that the same are due and unpaid to the city is prima facie evidence of the facts as shown.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.058 BILLING; PURCHASES.

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

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.059 FAILURE TO PROVIDE INVOICE OR DELIVERY TAG.

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

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.060 EXEMPTION OF EXPORT FUEL.

(A) The license tax imposed by ' ' 35.047 and 35.048 shall not be imposed on motor vehicle fuel:

(1) Exported from the city by a dealer or subdealer; or

(2) Any publicly owned body that is tax exempt B PUD, state highway, armed forces and police agencies.

(B) In support of any exemption from license taxes claimed under this section other than in the case of stock transfers or deliveries in his or her own equipment, every dealer or subdealer must execute and file with the city an export certificate in a form as shall be prescribed, prepared and furnished by the city, containing a statement made by some person having actual knowledge of the fact of the exportation, that the motor vehicle fuel has been exported from the city, and giving any details with reference to the shipment as the city may require. The city may demand of any dealer or subdealer any additional data as is deemed necessary in support of the certificate, and failure to supply the data will constitute a waiver of all right to exemption claimed by virtue of the certificate. The city may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the city in the fuel tank or a motor vehicle shall not be considered as exported from the city, except that a refund of the tax may be paid on the fuel as provided in ' 35.062(A)(4).

(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the city tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the city and the dealer or subdealer from whom the motor vehicle fuel was originally purchased, of his or her act.

(E) No dealer, subdealer or other person, shall conspire with any person to withhold from export, or divert from export, or to return motor vehicle fuel to the city or use as to avoid any of the fees imposed herein.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.061 FUEL IN VEHICLES COMING INTO THE CITY NOT TAXED.

Any person coming into the city in a motor vehicle may transport in the fuel tank of the vehicle motor vehicle fuel for his or her own use only and for the purpose of operating the motor vehicle without securing a license or paying the tax provided in ' ' 35.047 and 35.048, or complying with any of the provisions imposed upon dealers herein; but if the motor vehicle fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the persons so importing the fuel into the city shall be subject to all the provisions herein applying to dealers.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.062 REFUNDS.

(A) Any person who has paid any taxes on motor vehicle fuel imposed or directed to be paid hereunder either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and

repaid the amount of the tax paid by him or her, except as provided in ' ' 35.064 to 35.067, if the person has:

(1) Purchased and used the fuel for the purpose of operating or propelling stationary engines, tractors or motor boats;

(2) Purchased and used fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway;

(3) Purchased and exported the fuel from the city in containers other than fuel supply tanks of motor vehicles; or

(4) Purchased and exported the fuel in the fuel supply tank of a motor vehicle and has used the fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel fee or tax on the same fuel, or has paid any other highway use tax the rate for which is increased because the fuel was not purchased in, and the fee or tax thereon paid, to that state; or

(5) All publicly owned bodies.

(B) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for the equipment or separate tank for the motor, a refund may be claimed and allowed as provided by division (D) of this section, except as otherwise provided by this division (B), without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the city a statement of his or her claim and be allowed a refund as follows:

(1) For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed the claimant for the tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered; and

(2) For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, the claimant shall be allowed a refund of 25% of the tax paid on all fuel used in the truck.

(C) When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit, provided the vehicle is equipped with a metering device approved by the city and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.

(D) Before any refund may be granted, the person claiming the refund must present to the city a statement, accompanied by copies of the original invoices showing the purchases; provided that in lieu of the invoices, refunds submitted under division (A)(4) of this section shall be accompanied by information showing source of fuel used and evidence of payment of fee or tax to the state in which the fuel was used. The statement shall be made over the signature of the claimant, and shall state the total amount of the fuel for which he or she is entitled to be reimbursed under division (A) of this section. The city, upon the presentation of the statement and invoices or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel the taxes so paid by the claimant.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.063 LIMITATION ON APPLICATIONS FOR REFUNDS.

Applications for refunds made under ' ' 35.062, 35.066, 35.067 and 35.068 must be filed with the city before the expiration of 15 months from the date of purchase or invoice, except that unused fuel reported as an ending inventory on any claim may be included in a subsequent claim if presented not later than 15 months from the filing date of the claim which established the inventory. All applications for refunds based upon exportation of motor vehicle fuel from the city in the fuel supply tank of a motor vehicle must be filed with the city before the expiration of 15 months from the last day of the month in which the fuel was used, or before the expiration of 15 months from the date of an assessment for unpaid fee or tax by the state in which the fuel was used.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.064 SELLER TO GIVE INVOICE FOR EACH PURCHASE MADE BY PERSON ENTITLED TO REFUND.

(A) When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax imposed, the seller of the motor vehicle fuel shall make and deliver at the time of the sale separate invoices for each purchase in a form and containing any information prescribed by the city.

(B) The invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. Any person who alters any part of any invoice that will tend to give to the claimant an illegal gain shall have the entire claim invalidated. The seller shall for a period of at least 18 months retain copies of all invoices and make them available to the city upon request.

(C) The invoices required hereinunder may be the same as or incorporated in those required under O.R.S. 319.300.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.065 CLAIM OF REFUNDS.

(A) The city may require any person who makes claim for refund of tax on motor vehicle fuel to furnish a statement, under oath, giving his or her occupation, description of the machines or equipment

in which the motor vehicle fuel was used, the place where used and any other information as the city may require.

(B) The city may investigate claims and gather and compile any information in regard to the claims as it considers necessary to safeguard the city and prevent fraudulent practices in connection with tax refunds and evasions. The city may, in order to establish the validity of any claim, examine the books and records of the claimant for those purposes. The records shall be sufficient to substantiate the accuracy of the claim and shall be in a form and contain any information as the city may require. Failure of the claimant to maintain the records or to accede to the demand for the examination constitutes a waiver of all rights to the refund claimed on account of the transaction requested. (1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.066 REFUND OF TAX ON FUEL USED IN OPERATION OF VEHICLES OVER CERTAIN ROADS OR PRIVATE PROPERTY.

(A) Except where a refund is authorized by this chapter, upon compliance with divisions (B) and (C) of this section, the city shall refund in the manner provided in division (B) or (C) of this section the tax on motor vehicle fuel that is used in the operation of a motor vehicle:

(1) By any person on any road, thoroughfare or property in private ownership;

(2) By any person on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in O.R.S. 321.005, or the products of forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(a) An agency of the United States;

(b) The State Board of Forestry;

(c) The State Forester; or

(d) A license of any agency named in the above divisions (A)(2)(a), (b) or (c).

(3) By an agency of the United States or of this state, or of any county, city or port of the state on any road, thoroughfare or property, other than a state highway, county road or city street.

(B) Except for a farmer subject to division (C) of this section, the person or agency, as the case may be, who has paid any tax on the motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the tax so paid on the fuels or for the proportionate part of the tax paid on fuels used in the operation of the vehicles, when part of the operations are over the road, thoroughfares or property. The proportionate part shall be based upon the number of miles traveled by the vehicle over the roads, thoroughfares or property as compared with the total number of miles traveled by the vehicle. To be eligible to claim this refund, the person or agency, as the case may be,

shall first establish and maintain a complete record of the operations, miles traveled, gallons of fuel used and other information, in a form and in any detail as the city may prescribe and require, the source of supply of all fuels purchased or used, and the particular vehicles or equipment in which used. Whenever any claim is received and approved by the city, it shall cause the refund or tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(C) A farmer who has paid any tax on motor vehicle fuels imposed or directed to be paid, as provided herein, is entitled to claim a refund of the tax paid on the fuels used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership. To be eligible to claim the refund, a farmer shall maintain in a form and in any detail as the city may prescribe or require, a record, supported by purchase invoices of all motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel used and of all miles traveled on the highway. Whenever any claim is received and approved by the city, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(D) As used in divisions (B) and (C) of this section, **FARMER** includes any person who manages or conducts a farm for the production of livestock or crops, but does not include a person who manages or conducts a farm for the production of forest products, as defined in O.R.S. 321.005, or the products of the forest products converted to a form other than logs at or near the harvesting site, or of forest trees, unless the production of the forest products or forest trees is only incidental to the primary purpose of the farming operation.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.067 REFUNDS TO PURCHASERS OF FUEL FOR AIRCRAFT.

Whenever any statement and invoices are presented to the city showing that motor vehicle fuel has been purchased and used in operating aircraft engines and upon which the tax on motor vehicle fuel has been paid, the city shall refund the tax paid.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.068 REFUND OF TAX ON FUEL USED IN TRANSPORTATION OF RURAL FREE DELIVERY OR SPECIAL DELIVERY MAIL.

(A) All taxes collected by the city on the sale, use or distribution of any motor vehicle fuel used exclusively in the transportation of rural free delivery mail or special delivery mail of the United States shall be refunded to the person paying the tax if the person is engaged solely and exclusively in the transportation of rural free delivery mail or special delivery mail of the United States.

(B) Any person engaged solely and exclusively in the transportation of rural free delivery or special delivery mail of the United States, who buys any motor vehicle fuel and uses it exclusively in the transportation of rural free delivery mail or special delivery mail of the United States, and who has paid any tax on motor vehicle fuel, either directly by the collection of the tax by the vendor from the consumer or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of the tax paid by him or her upon presenting to the city a statement accompanied by the original invoice showing the purchase. The statement shall be made over the signature of the claimant and shall state the total amount of fuel so purchased and used by the consumer for the transportation of rural free delivery mail or special delivery mail of the United States. The city, upon the presentation of the statement and the voucher, shall cause to be repaid to the consumer from the taxes collected on motor vehicle fuels, the taxes so paid by the consumer on motor vehicle fuels so used.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.069 EXAMINATIONS AND INVESTIGATIONS.

The city, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, subdealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this city, and any other investigations as it considers necessary in carrying out the provisions of this subchapter, if the examinations or investigation disclose that any reports of dealers, subdealers or other person theretofore filed with the city pursuant to the requirements herein have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the city may make changes in subsequent reports and payments to the dealers, subdealers or other persons, or may make any refunds as may be necessary to correct the errors disclosed by its examinations or investigations.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.070 LIMITATION ON CREDIT FOR OR REFUND OF OVERPAYMENT AND ON ASSESSMENT OF ADDITIONAL TAX.

(A) Except as otherwise provided in this subchapter, any credit for erroneous overpayment of tax made by a dealer or subdealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer or subdealer, must be so taken or filed within three years after the date on which the overpayment was made to the city.

(B) Except in the case of fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this subchapter shall be served on dealers and subdealers within three years from the date upon which the additional taxes become due.

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.071 RECORDS TO BE KEPT BY DEALERS.

Every dealer or subdealer in motor vehicle fuel shall keep a record in a form as may be prescribed by the city of all purchases, receipts, sales and distribution of motor fuel. The records shall include copies of all invoices or bills of all these sales, and shall at all times during the business hours of the day be subject to inspection by the city or its deputies or other officers duly authorized by the city. (1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.072 RECORDS TO BE KEPT THREE YEARS.

Every dealer and subdealer shall maintain and keep, for the period of three years, all records of motor vehicle fuel used, sold and distributed within the city by the dealer or subdealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the city. In the event the records are not kept within this state, the dealer or subdealer shall reimburse the city for all travel, lodging and related expenses incurred by the city in examining the records. The amount of these expenses shall be additional tax imposed hereunder. (1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.073 USE OF TAX REVENUES.

Revenues from the tax imposed by this subchapter remaining after providing for the cost of refunds and credits authorized herein, shall be used for the construction, reconstruction, improvement, repair, maintenance and lighting of city streets proportionally as shown:

\$0.0099 for street lighting and miscellaneous road repair	33% total revenues
\$0.0201 for major road improvements	67% total revenues

(1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982; Ord. 1177, passed 8-5-2002; Ord. 1223, passed 9-17-2007; Ord. 1234, passed 7-21-2008)

' 35.074 ATTORNEY FEES.

In the event the city is the prevailing party in any action brought to enforce any provision of this subchapter, the city shall be entitled to recover in addition to all other relief granted a reasonable attorney fee from the opposing party. (1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

' 35.075 EFFECTIVE DATE.

This subchapter shall become effective on the thirtieth day following its adoption. (1977 Code, ' 6-21) (Ord. 1014, passed 7-19-1982)

PUBLIC IMPROVEMENTS; ASSESSMENTS

▸ **35.090 POWERS OF COUNCIL.**

Whenever the City Council shall decide it is in the general health, safety and/or welfare of its citizens, upon its own motion or upon the signed petition of the owners of more than one-half of the property to benefit from the public improvement, the Council may construct any public improvement and repair or otherwise maintain or relay the same whenever it may deem that the public health, safety and/or welfare interest may require. The Council may then assess all or part of the cost thereof on the property benefited directly by the improvement or repair, ordering the improvement or repair of the same in the manner herein provided.

(Ord. 1157, passed 9-7-1999)

▸ **35.091 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning, and in addition to their usual meanings.

BENEFITED PROPERTY. The real property within the boundaries of the survey.

CITY. The City of Tillamook, its City Council, employees, agents and/or assigns.

CONSTRUCT. Construct, lay, maintain, reconstruct and/or otherwise repair a public improvement.

COUNCIL. The City Council of the city composed of its elected or appointed Councilors.

DAY. Calendar day, unless otherwise specified.

IMPROVEMENT or PUBLIC IMPROVEMENT. Any street, sidewalk, sanitary sewer, storm sewer, water system, street lights, curbs, gutters or other infrastructure system of any kind constructed by or on behalf of city, including but not limited to the acquisition of machinery and or structures of any kind with an expected useful life of one year or more.

OWNER. OWNER, owner’s agent and/or assign, including any contract purchaser or tenant, and in that priority order.

RECORDER or CITY RECORDER. City Recorder as defined in the City Charter.

REMONSTRANCE. A written petition of any kind by an individual or group, timely presented by the date and time of public hearing, to the Council urging the contemplated action not be adopted or passed.

STRUCTURE. As defined by O.R.S. 310.140.
(Ord. 1157, passed 9-7-1999)

35.092 REPORT OF ESTIMATED COSTS AND PRELIMINARY ENGINEERING DESIGN.

(A) Whenever the Council decides to construct a public improvement where the cost of which is to be assessed to the benefited property, a written report and survey shall be prepared by an engineer, surveyor and/or other similarly skilled person describing the improvement and benefited property.

(B) The report shall contain the following information:

(1) A detailed map or plat showing the location, size, shape, topography and other relevant physical characteristics of the proposed improvement and benefited property;

(2) The estimated cost of the improvement, including any legal, administrative and preliminary engineering design costs attributable thereto; however, where the proposed project is to be carried out in cooperation with any other governmental agency, the City Council may adopt the plans, specifications and estimates of that agency;

(3) An estimate of the unit cost of the improvement to the specially benefited properties;

(4) A recommended method of assessment to arrive at a fair apportionment of the whole, or any portion thereof, cost of the improvement to the property specially benefited;

(5) The common and legal descriptions and assessed value of each lot, parcel of land or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof, and, when readily available, the names of the contract purchasers thereof (addition, lot, block and tax lot); and

(6) A statement of outstanding assessments against property to be assessed. The survey and report shall be filed and kept on file in the office of the City Recorder. The Council may approve the survey and report or resubmit the same to the person and/or engineer for modification or change. If the Council shall find the report and estimates to be satisfactory either as originally submitted or as modified, it may approve the same, or it may abandon the public improvement. The City Council, thereupon, by resolution, shall declare its purpose or intention to construct, lay, maintain, reconstruct or repair the public improvement according to the survey and report.

(Ord. 1157, passed 9-7-1999)

35.093 NOTICE AND PUBLIC HEARING.

(A) The City Recorder shall cause advanced actual and/or constructive notice of the proposed improvement to occur upon benefited property owners by posting, mailing, personal service and/or publication.

(B) Notice shall occur not less than ten days prior to the first public hearing on the improvement. The notice shall:

- (1) Specify the date, time and place of the public hearing;
- (2) Specify the public purpose, location and estimated cost of the improvement;
- (3) Refer to the improvement's survey and report; and

(4) Specify the deadline by which written objections and/or remonstrances, if any, must be filed with the city. This deadline shall not be less than ten days following notice nor longer than the date of the last public hearing, unless Council directs otherwise at the hearing.

(C) **OWNER** for purposes of notice by mail are those persons identified on county and/or city assessment rolls on the date of mailing the notice.
(Ord. 1157, passed 9-7-1999)

' 35.094 REMONSTRANCES.

At any time after notice and before the deadline in ' 35.093(B)(4), the owner of any benefited property may file a remonstrance. The Council upon considering all remonstrances may in its discretion discontinue the proceedings on the improvement. There shall only be one remonstrance per individual, benefited-property parcel for purposes of any numeric calculation under this subchapter. However, if owners of two-thirds of the benefited property remonstrate, then the city shall discontinue current proceedings on the improvement and the city shall not raise the same proceedings within six months following the decision to discontinue. If owners of less than two-thirds of benefited property remonstrate, the city may then decide whether to construct the improvement.
(Ord. 1157, passed 9-7-1999)

' 35.095 JURISDICTION.

Upon the city's decision to construct the improvement, all benefited property shall be liable for a proportionate share of improvement costs as prescribed by this subchapter and the Council, unless otherwise exempted by the Council or law.
(Ord. 1157, passed 9-7-1999)

' 35.096 METHOD OF ASSESSMENT; NOTICE OF PROPOSED ASSESSMENT.

(A) When the City Council shall have determined the whole cost of the construction of the public improvement, the City Recorder shall apportion the cost thereof upon the lots, parts of the lots and parcels of land in the areas where the improvements have been constructed in accordance with the benefit derived by each lot, part of lot or parcel of land. The City Recorder shall apportion the cost in

direct proportion to the front footage of the property and/or the area of the lot or parcel affected, or combination of both, in relation to the total cost of the improvement, including engineering, superintending, construction of the improvement, the cost of advertising and all other costs connected therewith. The City Recorder shall give notice of the same by publishing at least once in a newspaper of general circulation in the city for a period of not less than seven days, and by mailing a copy of the notice to the owner, agent of the owner, or person in possession of the property proposed to be assessed, addressed to the mailing address of the owner, all as disclosed by the tax assessment rolls of this county, at the time of the mailing of the notice.

(B) Notice shall specify the whole cost of the improvement; the share so apportioned to each lot, parts of lots or parcels of land; the date the final assessment decision will come before the City Council for a public hearing; and the date, not less than 20 days from the date of mailing of the notice, within which written objections to any proposed apportionment and assessment may be made to the City Council and filed with the City Recorder.

(Ord. 1157, passed 9-7-1999)

‘ **35.097 HEARING OF REMONSTRANCES; DOCKETING OF LIENS.**

At the time specified in the notice, or at any other subsequent time as the City Council may fix, the Council shall hear any and all objections and remonstrances to the proposed assessment, and thereafter may modify the proposed assessment as the Council may deem necessary to secure a just apportionment of benefit to the lots, parts of lots and parcels of benefited property. Thereafter, the City Council shall then declare the assessments by resolution, order or ordinance directing the City Recorder to enter the assessments in a docket called Adocket of city public works liens.@

(Ord. 1157, passed 9-7-1999)

‘ **35.098 NOTICE OF ASSESSMENT.**

Thereupon, the City Recorder shall mail notices of assessment in the same manner as provided herein for notices of proposed assessments.

(Ord. 1157, passed 9-7-1999)

‘ **35.099 BENEFITED PROPERTY.**

Each lot, part of lot or parcel of land shall be deemed to be benefited by the public improvement to the full amount of the assessment levied thereon.

(Ord. 1157, passed 9-7-1999)

‘ **35.100 ERRORS NOT TO DEFEAT ASSESSMENT; REASSESSMENT.**

No assessment shall be deemed invalid by reason of failure to enter the names of the owner of any lot, part of lot or parcel of land so assessed, or by a mistake in the name of the owner or the entry of a

name other than the name of the owner in the assessment, or in any acts or proceedings connected therewith. No delays, mistakes, errors or irregularities in any act or proceedings in the construction of a public improvement shall prejudice or invalidate any final assessment; but the same may be remedied by subsequent and amended acts or proceedings or, if found by decree of any court to be invalid, the Council may proceed by ordinances to reassess the property benefited by reason of the construction of the public improvement in a manner provided by O.R.S. 223.405 to 223.485, inclusive.

(Ord. 1157, passed 9-7-1999)

‘ 35.101 RECORD OF MAILING; MISTAKE IN MAILING.

A record may be kept of the mailing of any notice prescribed to be mailed in connection with any of the proceedings in relation to the proceedings assessing the costs of construction of the public improvement. Failure to mail, any mistake in mailing of or a mistake in the notice, shall not be fatal when notice is posted as herein required.

(Ord. 1157, passed 9-7-1999)

‘ 35.102 PROCEEDINGS PRESUMED REGULAR.

In any action, suit or proceeding in any court concerning any assessment of property or for the collection of the assessment, all proceedings connected therewith shall be presumed to be regular and to have been done in accordance with the methods and provisions herein set forth.

(Ord. 1157, passed 9-7-1999)

‘ 35.103 DOCKETING OF LIENS; PRIORITY OF LIENS.

The docket of the city public improvements liens shall contain the date of entry, the number or letter of each lot assessed and the number or letter of the block, the name of the addition or additions of which it is a part, and a description of each unplatted tract or parcel of land, and the name of the owner, or the entry of a name other than that of the true owner in the lien docket, shall not render void any assessment, nor in any way affect the lien of the city on the property described in the docket. The docket of city public improvements liens is a public writing, and the original or certified copies of any matter authorized to be entered therein are entitled to the force and effect thereof, and from the date of entry therein of any assessment upon a lot or part thereof, the sum so entered is to be deemed a lien thereon, which lien shall have priority over all other liens or encumbrances thereon whatsoever to the extent allowed by law.

(Ord. 1157, passed 9-7-1999)

‘ 35.104 PAYMENT OF ASSESSMENTS.

All assessments shall be due and payable on and after 20 days from the date of the mailing of notice of assessment. Any owner of any property so assessed, at any time within 20 days after notice of the assessment is given, may file with the City Recorder a written application to pay the assessment in installments. Interest on installments shall commence 20 days from the date of mailing of the notice of assessment.

(Ord. 1157, passed 9-7-1999)

' 35.105 APPLICATION FOR INSTALLMENT PAYMENTS.

The written application shall state that the applicant and property owner does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to make the public improvement for which the assessment is levied and in the apportionment of the costs thereof. The application shall provide that the applicant and property owner agrees to pay the assessment in 20 semiannual installments (or any other number of installment payments as the Council by resolution may prescribe), with interest at the current rate of interest for commercial loans or the rate of a bond sale, whichever the City Council deems appropriate on all of the assessment which has not been paid, plus 0.5% as an installment application fee. The application shall also contain a statement by lot or block, or other convenient description of the property of the applicant assessed for the improvement. No assessment shall be deemed invalid, nor shall any application be refused, for installment payment of assessment in the event the assessment shall be greater than the amount of assessed valuation as disclosed on the tax records of the county, at the time of assessment. Also, an application under ' 35.111(C) shall be considered a separate application here for each lot or parcel such that a separate installment fee described here shall be charged.

(Ord. 1157, passed 9-7-1999)

' 35.106 RECORDS OF INSTALLMENT PAYMENTS.

The City Recorder shall prepare records for installment payment of the public improvement assessments, and the applications received for each assessment shall be kept separate. The City Recorder shall further enter under separate heads for each public improvement the date of filing of each application, the name of the applicant, the description of the property and the amount of assessment shown in the application.

(Ord. 1157, passed 9-7-1999)

' 35.107 DOCKETING OF ASSESSMENT LIENS; MANNER OF PAYMENT.

(A) After expiration of the time for filing the application for installment payment of assessment, the City Recorder shall enter in a docket kept for that purpose a description of each lot or part of lot or parcel of land, or other property against which the assessment is made, bears or is chargeable, for the cost of the improvement, with the name of the owner and the amount of the unpaid assessment. This docket shall stand thereafter as a lien docket for costs assessed and levied in favor of the city on the unpaid assessments at the current rate of interest for commercial loans or the rate of bond sale, whichever is deemed appropriate by the City Council against each lot or parcel of land or other property, until the assessment and interest are paid.

(B) All unpaid assessments and interest are a lien on each lot or parcel of land or other property, respectively, in favor of the city and shall have priority over all other liens, to the extent allowed by law, and encumbrances whatsoever, and shall be payable semiannually for ten successive years, unless otherwise prescribed by the Council, to the city by the owner of each lot, part of lot or parcel of land assessed for the public improvement whose application to pay the assessments of the improvement has been filed as herein provided. The first payment shall be due and payable at the expiration of six months from the date of the assessment in the public works lien docket, and subsequent payments and like amounts at the expiration of each semi-annual period thereafter.

(Ord. 1157, passed 9-7-1999)

35.108 DOCKET OF ENTRIES OF PAYMENTS DUE AND PAYMENTS MADE.

The City Recorder shall, when installments and interest thereon are due, make the proper entry of the installment and interest, and notify the property owner that the installment and interest are due. However, failure of any owner to receive the notification shall not prevent collection of the installments. The City Recorder or other authorized city officer shall issue a receipt to the person paying the installment and interest and shall file duplicates of the receipts with the City Recorder or other city officer designated by the City Council; and proper entries shall be made on the city public improvement lien docket showing all payments made thereon. It is further provided that any time after application for installment payments shall have been made, any owner of any property against which the assessment is made and lien docketed may pay to the City Recorder the whole amount of the assessment for which the lien is docketed, together with the full amount of interest and costs accrued thereon to date of payment, and upon payment thereof the City Recorder shall enter upon the public improvement lien docket the fact and date of the payment and that the lien is discharged.

(Ord. 1157, passed 9-7-1999)

35.109 DISPOSITION OF PAYMENTS ON ASSESSMENTS.

The City Recorder, upon receiving any funds for the public improvement assessments, shall deposit the funds per the public improvement resolution.

(Ord. 1157, passed 9-7-1999)

35.110 ENFORCEMENT OF LIENS.

In addition to any other remedy available and all methods in this subchapter for the enforcement and collection of assessments made, payment shall be enforced in the manner in O.R.S. 223.505 to 223.650, inclusive.

(Ord. 1157, passed 9-7-1999)

35.111 SEGREGATION OF ASSESSMENTS.

(A) Whenever property which has been assessed as an entire tract or parcel is subsequently divided into two or more lots or parcels, any person having an ownership interest in any portion of the property divided may make application to the City Council for a segregation of the assessment lien. In cases where the City Council deems a segregation to be appropriate, fair and equitable to the city and all other property owners, it shall make the final determination as to the amounts of the assessment lien to be segregated and placed upon each parcel involved in each segregation procedure.

(B) Applications for the segregation of assessment liens shall be on forms provided by the city. The form shall contain, among other items, the following:

(1) A legal description of the original tract, either by lot and block or metes and bounds, as the case may be;

(2) Legal descriptions of each parcel or tract after the original tract is divided;

(3) The square foot area of each parcel or tract;

(4) Registered surveyor's map which shows the location of each tract with legal descriptions and square footage of each tract;

(5) Names, addresses and telephone numbers of all persons, firms and corporations having an interest, legal or equitable, as owners, lessee, mortgagee, beneficiary under trust deed, or otherwise, as to each parcel or tract;

(6) Copies of contracts, deeds and other documents and instruments executed to effect a division of the original parcel;

(7) Competent appraisals or other evidence satisfactory to the City Council disclosing the fair cash market value of each tract;

(8) Every person, firm and corporation having an interest, legal or equitable in all tracts which comprise the original tract shall join in the application for segregation;

(9) A waiver of any irregularity in any part of the proceedings resulting in the assessment lien, including the manner, form, procedure and amount of lien, and the amount of the lien is acknowledged as a valid and subsisting lien against the property;

(10) Acknowledgment that even though the full amount of the prorated portion of an assessment lien is paid with respect to the parcel or tract divided and segregated from the original tract, the property which is the subject of the application for segregation is still subject to the obligations of the bond issue in existence for the financing of the project which gave rise to the assessment lien, including but not limited to the city's obligation to cause to be levied taxes on all property, including the applicants' segregated property, to pay the principal and interest on the existing bond indebtedness; and

(11) Agreement that the entire amount of the portion of the assessment lien found under division (A) above to be segregated and placed upon the parcel divided from the original tract, will be paid by applicants upon the final determination's being made by the City Council.

(C) (1) An application under this section shall be accompanied by a nonrefundable fee of \$250. The amount of the fee may be subsequently or later revised by resolution of the City Council.

(2) An application under this section shall be also considered a separate application under ' 35.105 for each lot or parcel. A separate installment payment application fee of 0.5% of the original assessment shall be charged for each additional parcel or lot created.

(D) No application for segregation of an assessment lien shall be considered or approved by the City Council if any of the following exist:

(1) The assessment lien on the original parcel or tract is in default in payment of principal or interest, or the property or the owners or possessors thereof are in violation of any zoning, land use or building laws, ordinances or regulations;

(2) The existence of, or threatened raising of, a question of the validity of an assessment lien by anyone having an interest in the tract or parcel on which the lien is sought to be segregated;

(3) The existence of litigation pertaining either directly or indirectly to the validity of the assessment lien;

(4) Failure of the applicant to waive any irregularity in any part of the proceedings which resulted in the assessment lien, including the manner, form, procedure and amount of lien, and/or failure to acknowledge as valid and subsisting the assessment lien against the original parcel or tract;

(5) Failure of the applicant to acknowledge and agree that, even though the full amount of the prorated portion of the assessment lien is paid with respect to the tract divided from the original parcel, the property which is the subject of the application for segregation of an assessment lien is still subject to the obligations of the bond issue in existence for the financing of the project which gave rise to the assessment lien, including but not limited to the city's obligation to cause to be levied taxes on all property, including the applicants' property, to pay the principal and interest on the bond issue;

(6) Any division or partition of the original parcel of property which would be contrary to or in violation of any zoning, land use or building laws, ordinances, rules or regulations;

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(7) Any division which would leave a splinter or unbuildable lot, or which may prejudice the city's security for payment of principal or interest on the bond issue;

(8) Failure of applicants to furnish the required information or to execute the application in the form required; or

(9) Any fact or condition which the City Council finds may prejudice the interest of the city.

(E) Upon consideration of an application, the City Council, upon finding that divisions (E)(1) through (E)(3) apply, shall by resolution order the City Recorder to discharge the portion of the assessment lien apportioned to the subject property upon receipt of payment to the city of the amount determined and set forth in the resolution by the City Council:

(1) The application meets the requirements of this section;

(2) The application may be granted as requested, or as may be amended, without prejudice to the rights and security of the city; and

(3) The segregation portion of the assessment lien apportioned to the property which is the subject of the application is determined to be in a specified amount.

(F) In the event the City Council determines that an application for segregation should be denied because the interests of the city may be prejudiced, appropriate notation thereof shall be made in the minutes.

(Ord. 1157, passed 9-7-1999)

▸ **35.112 CONSISTENCY WITH STATE LAW.**

Insofar as possible, this subchapter shall be construed to be consistent with O.R.S. 310.140 et seq. and State Constitution, Article XI, Section 11b.

(Ord. 1157, passed 9-7-1999)

▸ **35.113 CONSTRUCTION AND INTERPRETATION.**

The headings of the sections or divisions of this subchapter are intended for information only and shall not be used to interpret section or division contents. The city shall be the sole interpreter of this subchapter. The city expressly does not adopt any prior interpretation of any definitions, phrases or words used in this subchapter.

(Ord. 1157, passed 9-7-1999)

IMPROVEMENT PROCEDURES GENERALLY; REQUIREMENTS FOR DEVELOPER**' 35.130 AGREEMENT FOR IMPROVEMENTS.**

Before a land divider or other developer can receive approval for the improvement of land, he or she shall execute and file with the City Recorder an agreement between himself or herself and the city specifying the period B following approval B within which he or she or his or her agent or contractor shall complete all improvement work required by or pursuant to the applicable city plans, policies and laws, and providing that, if he or she shall fail to complete the work within the period, the city may complete the work and recover the full cost and expense thereof from the developer. The agreement shall also provide for reimbursement of the city by the developer for the cost of inspection by the City Engineer. The agreement may also provide for an extension of time under conditions therein specified. (1977 Code, ' 2-6) (Ord. 911, passed 12-5-1977)

' 35.131 BOND.

(A) The land divider or other developer shall file with the agreement, to assure his or her full and faithful performance thereof, one of the following:

(1) A surety bond executed by a surety company authorized to transact business in the state;

(2) A person bond cosigned by at least one additional person who shall not be related to the developer by blood or affinity. The developer and cosigner shall submit evidence of financial responsibility, and the financial resources of those signing the bond shall provide reasonable assurances of the ability of the developer to proceed in accordance with the agreement; or

(3) Cash.

(B) The assurance of full and faithful performance shall be in a form approved by the City Attorney and for a sum approved by the City Manager as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and to cover replacement and repair of existing streets and other public improvements damaged in the development of the land. This shall not be construed to include normal wear and tear on existing public facilities which occurs from any lawful use of vehicles and equipment. Notification to the developer of the city of the damage shall be within 210 days from the completion of the project. Completion of improvement work will not be assumed until inspected and accepted by the city. A bond agreement for a development may terminate after one year from the inspection or acceptance of the project. Acceptance of a particular portion of the project for a declining bond agreement may be authorized by the city.

(C) If the developer fails to complete the improvement work in accordance with the provisions of this subchapter and other requirements of the city and the city has completed the work, or if the developer shall fail to reimburse the city for the cost of inspection, engineering and incidental expenses and to cover cost of replacement and repair of existing streets or other improvements damaged in the development of the land, the city shall call on the surety for reimbursement, or shall appropriate from

any cash deposits funds for reimbursement. In any case, if the amount of surety bond or cash deposit exceeds the cost and expense incurred by the city, it shall release the remainder; and if the amount of the surety bond or cash deposit is less than the cost and expense incurred by the city, the developer shall be liable to the city for the difference.

(1977 Code, ' 2-6) (Ord. 911, passed 12-5-1977)

' 35.132 IMPROVEMENT PROCEDURE.

(A) In addition to other requirements, improvements installed in the city by a developer either as a requirement of the city or at his or her own option shall conform to the requirements of this subchapter, the Superintendent of Streets and applicable city plans, policies and laws. In the event of a conflict between this subchapter and the APWA *Standard Specifications for Public Works Construction*. This subchapter shall take precedence.

(B) The improvements shall be installed in accordance with the following procedure:

(1) Work shall not begin until plans have been checked for adequacy and approved by the City Manager and Street Superintendent. To the extent necessary for evaluation of the land development proposal, the plans may be required before approval of the plan of development, such as the tentative plan of a subdivision;

(2) Work shall not begin until the city has been notified at least 24 hours in advance; and if work is discontinued for two weeks or more without reasonable cause and/or explanation by the developer, it shall not be resumed until the city has been notified;

(3) Improvements shall be constructed under the inspection and to the satisfaction of the city. The city may require changes in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change;

(4) Underground utilities, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of the streets or as specifically set forth in the plans. Stubs for service connections for underground utilities and sanitary sewers shall be placed to a length obviating the necessity for disturbing the street improvements when service connections are made; and

(5) A map showing public improvements as built shall be filed with the City Manager upon completion of the improvements.

(1977 Code, ' 2-6) (Ord. 911, passed 12-5-1977)

' 35.133 IMPROVEMENT REQUIREMENTS.

Improvements to be installed as part of a land development at the expense of a land developer are as follows.

(A) *Streets*. Streets shall conform to the specifications of applicable plans, policies and laws of

the city. These specifications include location, grading, width, paving, curbs, gutters and drainage. The subdivider or other land developer shall improve the extension of all streets within his or her development to the centerline of existing streets. This includes any necessary arterial extension to the development.

(B) *Drainage.* Drainage of surface water shall be provided as required by applicable plans, policies and laws.

(C) *Structures.* Structures specified as necessary by the city for drainage, access and public safety shall be installed.

(D) *Sidewalks.* Sidewalks shall be constructed as required by the City Planning Commission.

(E) *Sewers.* Sanitary sewer facilities connecting with the existing city sewer system shall be installed to each building site. When the existing sewage collection lines are inadequate to serve the proposed development, the expense of improving the lines shall be shared by the developer. The developer's share in the improvements shall be determined by the Planning Commission on the basis of percentage of use by the development in question. No septic tanks or cesspools shall be permitted within the city except in compliance with state standards as enforced by the Council and where the Planning Commission finds subsurface sewage disposal acceptable and sewer connection impractical.

(F) *Water.* Water mains and fire hydrants of design, layout and locations approved by the Water Superintendent as conforming to the City Water Commission standards shall be installed and connected with the existing city water system. When the existing water distribution lines are inadequate to serve the proposed development, the expense of improving the lines shall be shared by the developer. The developer's share in the improvements shall be determined by the Water Commission. If the Planning Commission is advised by the Water Commission that providing hookups to the city water system is not feasible due to extreme distance or soil conditions, approval may be given for a substitute system.

(G) *Street trees.* Street trees may be required by the Planning Commission independently or upon recommendation of the Tree Committee upon its adoption.

(H) *Monuments.* Monuments shall be placed at all lot and block corners, angle points of curves in streets, at intermediate points and shall be of material, size and length as required by state law for subdivisions. Monuments that are disturbed before improvements are completed by the developer shall be replaced to conform to the requirements of state law for subdivisions.

(I) *Underground utility and service facilities.* The placement of all utility lines, including but not limited to those required for electric, communication, lighting and cable television services and related facilities, shall be the responsibility of the developer and may be placed underground if he or she so wishes.

(J) *Street light standards.* Street lights shall be installed in locations recommended by the Planning Commission in accordance with applicable city plans, policies and laws.

(K) *Street signs.* Street name signs shall be installed at street intersections. Other signs may be

required upon the recommendation of the city staff or Planning Commission. Streets shall be dedicated and named in accordance with appropriate state laws.

(1977 Code, ' 2-6) (Ord. 911, passed 12-5-1977)

' 35.134 APPEALS.

A developer or any interested person may appeal a determination made in the enforcement of this subchapter by the following procedure: a determination made by a member of the staff of the city or an agent or designee of the city may be appealed to the City Manager, who then will rule on the matter. If the appellant does not concur with the ruling of the City Manager or if the City Manager fails to rule within 30 days after the matter is brought to his or her attention, the appellant may make written appeal to the City Council of the city. The written appeal must be made within ten days following the ruling by the City Manager or following expiration of the 30 days.

(1977 Code, ' 2-6) (Ord. 911, passed 12-5-1977)

REIMBURSEMENT DISTRICTS

' 35.150 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning, and in addition to their usual meanings.

APPLICANT. A person, as defined in this section, who is required or chooses to finance some or all of the cost of street, water or sewer improvement that is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement. The **APPLICANT** may be the city.

CITY. The City of Tillamook, its City Council, employees, agents and/or assigns.

CITY ENGINEER. The person holding the position of City Engineer or any individual designated or providing the necessary engineering services by the Council or City Manager to perform the duties set out within this subchapter.

COUNCIL. The City Council of the city, composed of its elected or appointed Councilors.

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

PUBLIC IMPROVEMENT and **PUBLIC IMPROVEMENTS.** Any construction, reconstruction or upgrading of water, sanitary sewer or stormwater line; public street (including bicycle lane) or sidewalk or under-grounding of public utilities.

REIMBURSEMENT AGREEMENT. The agreement between an applicant and the city that is authorized by the Council and executed by the City Manager, providing for the installation of and payment for reimbursement district public improvements.

REIMBURSEMENT DISTRICT. The area that is determined by the Council to derive a benefit from the construction of public improvements, financed in whole or in part by the applicant, and includes property that has the opportunity to utilize the improvements.

REIMBURSEMENT FEE. The fee required to be paid by a resolution of the Council and the reimbursement agreement. The Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee that considers the cost of reimbursing the applicant for financing the construction of public improvements within the reimbursement district. The term **REIMBURSEMENT FEE** does not include any local improvement district assessment or any system development charge established by state law or established by the city.

SEWER IMPROVEMENT. A sewer, a sewer pump station or sewer line improvement conforming with city standards and including but not limited to extending sewer line to property, other than property owned by the applicant, so that sewer service can be provided for the other property without further extension of the line.

STORMWATER IMPROVEMENT. A stormwater or stormwater line improvement conforming with city standards and including but not limited to extending a stormwater line to property, other than property owned by the applicant, so that stormwater disposal for the property can be provided without further extension of the line.

STREET IMPROVEMENT. A street or street improvement conforming with city standards and including but not limited to street, storm drain, curb, gutter, sidewalk, bike path, traffic control device, street tree, light and sign and public right-of-way.

UTILIZE. To use or benefit from a public improvement, to apply for a building or other permit that will allow for the use or increase in the use of a public improvement or to connect to a public improvement.

WATER IMPROVEMENT. A water or water line improvement conforming with city standards and including but not limited to extending water line to property, other than properly owned by the applicant, so that water service can be provided for the other property without further extension of the line.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.151 APPLICATION FOR A REIMBURSEMENT DISTRICT.

(A) Any applicant who finances some or all of the cost of a public improvement available to provide service or benefit to property other than property owned by that person may, by written application filed with the City Manager, request the city establish a reimbursement district. The

improvement must be in a size greater than that which would otherwise ordinarily be required or must be available to provide service to property other than that owned by the applicant. Examples include but shall not be limited to:

- (1) Full-street improvements instead of half-street improvements;
- (2) Off-site sidewalks;
- (3) Connection of street sections for continuity;
- (4) Extension of water lines;
- (5) Extension of sewer lines;
- (6) Sewer pump station;
- (7) Parks; and
- (8) Under-grounding of public utilities.

(B) The application may be submitted to the city prior to the installation of the public improvement.

(C) The application shall include the following:

- (1) A description of the location, type, size and cost of the public improvements to be eligible for reimbursement;
- (2) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage and/or square footage of the properties, or similar data necessary for calculating the apportionment of the cost; and a listing of the property or properties owned by the applicant;
- (3) The actual or estimated cost of the improvements as evidenced by bid, projection of the cost of labor and materials, or other evidence satisfactory to the City Engineer;
- (4) The estimated date of completion of the public improvements;
- (5) The applicant may request a discretionary annual fee adjustment, which, if granted, will be administered pursuant to ' 35.155(E);
- (6) An acknowledgment by the applicant that the applicant agrees to indemnify, defend and hold harmless the city, its elected officials, appointed officials, employees and agents from any and all claims that may arise from the creation or administration of the district. This acknowledgment shall release the city, its elected officials, appointed officials, employees and agents from any and all claims that reimbursement fees were improperly collected, collected in the wrong amount, or not collected at

all, for any reason, including negligence on the part of the city, its elected officials, appointed officials, employees and agents. The applicant shall acknowledge that the applicant accepts all risk that reimbursement will not occur, or will not occur in the amount or within the time expected by the applicant; and

(7) The applicant shall provide proof of ownership in the form of a description of the type of company (corporation, LLC, partnership and the like) as well as the designation of the authorized signatories.

(D) All applications must be accompanied by a fee in an amount sufficient to cover the cost of administrative review and notice required by this subchapter as set by the Council resolution.

(E) If an application is submitted after the construction of the public improvements, the application must also include the date the city accepted the public improvements and evidence of the actual cost of the improvements shown by receipt, invoice or other documents. An application will not be complete until all the information is submitted to the city. Following the construction, the applicant shall provide the following information for review and approval by the city: letter of donated capital showing the cost of the installation, a warranty deed releasing all interest in the improvements, a lien release from the contractor and applicant stating that all contractors, subcontractors and suppliers have been paid, an acceptance letter from the Engineer or city stating the improvements are in accordance with city standards. The applicant shall provide lien releases from all contractors, subcontractors and suppliers as a strict condition precedent to city acceptance of a reimbursement district.

(F) If an application is submitted prior to the construction of the improvements, the application must be accompanied by an estimate of the cost of the improvements as evidenced by bid, projection or other data. The application must also include the estimated date of completion of the public improvements. An application will not be complete until all the information is submitted to the city. The applicant shall provide a bond for 200% of the cost for any improvement located within an easement or on private property.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.152 REIMBURSEMENT AGREEMENT REPORT.

(A) The City Engineer or designee shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The City Engineer or designee may require the submittal of other relevant information from the applicant in order to assist in the evaluation.

(B) The City Engineer or designee shall prepare a written report for the Council, considering and making recommendations concerning the following factors:

(1) Whether the applicant will finance some or all of the cost of a public improvement, thereby making service available to property, other than property owned by the applicant;

(2) The boundary, size and area proposed to be included in the reimbursement district;

(3) The actual or estimated cost of the public improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

(4) A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a unit for applying the reimbursement fee to property that may, with city approval, be partitioned, altered, modified or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements and other factors deemed relevant by the City Engineer or designee. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered; a water-related contribution in the same location as a sewer improvement would not be considered);

(5) The amount to be charged by the city for administration of the district by the city. The administration fee shall be fixed by the Council and will be included in the resolution approving and forming the reimbursement district. If the applicant is other than the city, the administration fee is due and payable to the city at the time the reimbursement agreement in ' 35.155(B) is signed. If the city is the applicant, the administration fee shall be included in the reimbursement fee and is due and payable at the time there is an obligation to pay the reimbursement fee as required by ' 35.159;

(6) The period of time for the right to reimbursement of not greater than ten years. At the end of the ten-year reimbursement period, the reimbursement agreement will terminate;

(7) Whether the public improvements will or have met city standards; and

(8) Whether it is fair and in the public interest to create a reimbursement district.
(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

' 35.153 AMOUNT TO BE REIMBURSED.

(A) A reimbursement fee shall be computed by the city for all properties within the reimbursement district, excluding property owned by or dedicated to the city or the state, that have the opportunity to utilize the public improvements, including the property of the applicant for formation of a reimbursement district. The fee shall be calculated separately for each public improvement. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property owned by the applicant.

(B) The cost to be reimbursed to the applicant, if other than the city, shall be limited to the cost of construction, engineering and off-site easement and right-of-way acquisition as previously approved by the city. If the applicant is the city, the costs to be reimbursed shall also include an administration cost and all costs associated with the acquisition of easements and rights-of-way. Engineering shall include surveying and inspection and shall not exceed 15% of eligible construction costs. If the applicant is other than the city, the costs to be reimbursed for right-of-way acquisition shall be limited to a value

approved by the city and in reasonable conformance with the value calculated by an appraisal for an easement but no greater than one-third of the land value/square foot as determined by the taxing district.

(C) No reimbursement shall be allowed for financing costs, permits or fees required for construction permits, land or easements dedicated by the applicant, costs that are eligible for systems development charge credits, project management fees or any costs that cannot be clearly documented.

(D) Reimbursement for legal expenses shall be allowed only to the extent that the expenses relate to the acquisition of off-site right-of-way or to the preparation and filing of an application for reimbursement, and to working with the city through the Engineer's report and formation public hearing stages of an application.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

' 35.154 PUBLIC HEARING.

(A) Within a reasonable time after the City Engineer has completed the report required in ' 35.152, the Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The Council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

(B) Not less than ten or more than 30 days prior to any public hearing held pursuant to this subchapter, the applicant and all owners of property within the proposed district shall be notified of the hearing and the purpose thereof. This notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the Council's action to approve the same.

(C) If a reimbursement district is formed prior to construction of the improvements, a second public hearing, subject to the same notification requirements, shall be held after the improvements have been accepted by the city. At that time, the Council at its discretion may modify the resolution to reflect the actual cost of the improvements.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

' 35.155 CITY COUNCIL ACTION.

(A) After the first public hearing held pursuant to ' 35.154, the Council shall approve, reject or modify the recommendations contained in the City Engineer's report. The Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the City Engineer's report as approved or modified, and specify that payment of the reimbursement fee, as

determined for each property, is a precondition to receipt of any city permit applicable to development of that property.

(B) When the applicant is other than the city, the resolution shall instruct the City Manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The agreement shall be contingent upon the improvements being accepted by the city. The agreement, at a minimum, shall contain the following provision:

(1) The public improvements shall meet all applicable city standards;

(2) The amount of the potential reimbursement the applicant may receive along with an acknowledgment that the total amount of any reimbursement will not exceed the actual cost of the public improvements;

(3) The annual fee adjustment;

(4) The applicant shall guarantee, with a surety bond, the public improvements for a period of 12 months after the date of city acceptance;

(5) The applicant shall defend, indemnify and hold harmless the city from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the city's establishment of the district. The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners, and that the applicant assumes all risk of every kind that the amount reimbursed may not be as much as anticipated, or that any particular reimbursement fee may not be collected by the city. The applicant has a private cause of action for collection of a reimbursement fee against any person obligated to pay a reimbursement fee, and the applicant shall bear the entire cost of an action to collect the reimbursement fee, without any right to contribution by the city; and

(6) Other provisions as the Council determines necessary and proper to carry out the provisions of this subchapter.

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

(D) The Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee that considers the cost of reimbursing the applicant for financing the construction of a public improvement within the reimbursement district.

(E) Where the city is the applicant, City Council by resolution shall address and decide the elements in this section.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.156 NOTICE OF ADOPTION OF RESOLUTION.

The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee, and if there will be any annual adjustments to that fee.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.157 RECORDING THE RESOLUTION.

The City Recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the County Clerk so as to provide notice to potential purchasers of property within the district. The city shall also record the obligation of each benefited property to pay a reimbursement fee in the city's lien docket. The recording shall not create a lien. Failure to make this recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.158 CONTESTING THE REIMBURSEMENT DISTRICT.

Any legal action intended to contest the formation of a reimbursement district or the reimbursement fee shall be filed within 60 days of the Council adoption of a resolution relating to the application. Legal challenge shall only be by writ of review pursuant to O.R.S. 34.010 through 34.100. A decision by the city to create a reimbursement district is a quasi judicial decision.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.159 OBLIGATION TO PAY REIMBURSEMENT FEE.

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

(1) A building permit for a new building;

(2) Building permit, for any addition, modification, repair or alteration of a building, which exceeds 25% of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This division (A)(2) shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;

(3) Any alteration, modification or change in the use of real property, that increases the number of parking spaces required under city standards in effect at the time of permit application;

(4) Connection to or use of water, sanitary sewer, stormwater or street improvements, if the

reimbursement district is based on that improvement; and

(5) Approval of a land partition or final subdivision plat.

(B) The city's determination of who shall pay the reimbursement fee is final. Neither the city nor any elected official, appointed official, agent or employee of the city shall be liable for payment of any reimbursement fee or portion thereof as a result of this determination, or as a result of failure, for any reason, of the city to collect a reimbursement fee.

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

(D) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless the payment was for a different type of improvement. The reimbursement fee must be paid in full when a permit or land division approval, including a final subdivision plat, is issued or approved. Where approval is given as specified in division (A) above, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(E) Neither the city, the county, this state nor the United States shall be required to pay a reimbursement fee without the consent of the governmental agency.

(F) The right of reimbursement shall not extend beyond ten years from the district formation date. The applicant solely and exclusively bears the risk that the city may not collect from benefited property owners their respective share of the cost of the improvements, and that the total amount collected may be less than anticipated. Further, the applicant acknowledges that by utilizing the procedures of this subchapter that the city shall be under no obligation to institute legal proceedings to collect unpaid amounts that may be due to the applicant. The applicant must institute and pay for the legal proceedings, and the city will not be obligated to share or pay the litigation costs associated with the proceedings.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

' 35.160 PUBLIC IMPROVEMENTS.

Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city. More than one public improvement may be the subject of a reimbursement district. A property may be subject to more than one reimbursement district for distinct public improvements.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

' 35.161 ADMINISTRATION; COLLECTION AND PAYMENT.

(A) The applicant shall receive all reimbursement collected by the city for reimbursement district public improvements. The reimbursement shall be delivered to the applicant for as long as the reimbursement district agreement is in effect.

(B) The right of reimbursement is assignable and transferable after written notice is delivered to the city, advising the city to whom future payments are to be made, and after approval of assignment by the city.

(C) The city shall charge an administrative fee to cover the cost of managing the reimbursement district. This fee shall be updated periodically by the Council but shall be established at \$75.

(D) The city shall establish separate accounts for each reimbursement district. Upon receipt of a reimbursement fee, the city shall cause a record to be made of that property's payment and remit the fee to the person who requested establishment of the reimbursement district or their assignee within 60 days of receipt of the reimbursements minus a \$75 administration fee.

(E) The reimbursement fee is in lieu of a local improvement district charge for the improvements installed pursuant to the reimbursement district agreement. The reimbursement fee is not intended to replace or limit any other fee or charge collected by the city.

(F) The applicant shall provide and update applicant's current address to which reimbursement payments are to be sent.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.162 CONSISTENCY WITH STATE LAW.

Insofar as possible, this subchapter shall be construed to be consistent with O.R.S. 310.140 et seq. and State Constitution, Article XI, Section 11b.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

35.163 CONSTRUCTION AND INTERPRETATION.

The headings of the section or divisions of this subchapter are intended for information only and shall not be used to interpret paragraph contents. The city shall be the sole interpreter of this subchapter. The city expressly does not adopt any prior interpretation of any definitions, phrases or words used in this subchapter.

(Ord. 1241, passed 4-20-2009; Ord. 1254, passed 1-3-2011)

MARIJUANA TAX**35.200 DEFINITIONS**

MANAGER means the City Manager of the City of Tillamook or his/her designee.

GROSS TAXABLE SALES means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this Ordinance.

MARIJUANA means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by the Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

OREGON MEDICAL MARIJUANA PROGRAM means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

PERSON means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

PURCHASER means any person who acquires marijuana from a retail seller for any valuable consideration.

PURCHASE OR SALE means the retail acquisition or furnishing for consideration by any person of marijuana within the City. This definition does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

REGISTRY IDENTIFICATION CARDHOLDER means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

RETAIL SALE means the transfer of goods or services for any valuable consideration. This definition does not include the transfer or exchange of goods or services between a grower or processor and a seller.

SELLER means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property

or other consideration.

TAX means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this ordinance

TAXPAYER means any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this ordinance.

35.201 PURPOSE OF THE TAX

For the purpose of the Ordinance, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Tillamook is exercising a taxable privilege. The purpose of the Ordinance is to impose a tax upon the retail sale of marijuana, medical marijuana and marijuana-infused products.

35.202 LEVY OF TAX

(A) There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this ordinance.

(B) The amount of tax levied is as follows:

- 1) Five percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.
- 2) Ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program
- 3) Upon City Council resolution, the amount of the tax levied may be increased up to twenty-five percent (25%) of the gross sale amount paid to the seller by a registry identification cardholder.
- 4) Upon City Council resolution, the amount of the tax levied may be increased up to twenty-five percent (25%) of the gross sale amount paid to the seller by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.

(C) The purchaser shall pay the tax to the seller at the time of the purchase or sale of marijuana.

35.203 DEDUCTIONS

The following deductions shall be allowed against sales received by the seller providing marijuana:

(A) Refunds of sales actually returned to any purchaser.

- (B) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

35.204 SELLER RESPONSIBLE FOR PAYMENT OF TAX

- (A) Every seller shall, on or before the fifteenth (15th) day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the City Manager on forms provided by the City, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. The seller may request or the City Manager may establish shorter reporting periods for any seller if the seller or the City Manager deems it necessary in order to ensure collection of the tax and the City Manager may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the City Manager. The quarters are:
- First quarter:* January, February, March
Second quarter: April, May, June
Third quarter: July, August, September
Fourth quarter: October, November, December
- (B) At the time the return is filed, the full amount of the tax collected shall be remitted to the City Manager. Payments received by the City Manager for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- (C) Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the City Manager, in her or his sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to ensure collection of the tax. The City Manager also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this ordinance shall be held in trust for the account of the City until payment is made to the City Manager. A separate trust bank account is not required in order to comply with this provision.
- (D) For good cause, the City Manager may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 7.

- (E) Every seller required to remit the tax imposed in this ordinance shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- (F) Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the dispensary and such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The City Manager shall have the right to inspect all such records at all reasonable times.

35.205 PENALTIES AND INTEREST FOR NON-PAYMENT

- (A) Any seller who fails to remit any portion of any tax imposed by this ordinance within the time required shall pay a penalty of ten percent (10%) of the amount of the tax.
- (B) Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date, on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- (C) If the City Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- (D) In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (E) Every penalty imposed, and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- (F) A seller who fails to remit the tax within the required time may petition the City council for waiver and refund of the penalty or a portion of it. The Council may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in Section 9.

35.206 FAILURE TO REPORT AND REMIT TAX-DETERMINATION OF TAX BY CITY MANAGER

If any seller should fail to make, within the time provided in this ordinance, any report of the tax required by this ordinance, the City Manager shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the City Manager shall procure such facts and information as is able to be obtained, upon which to base the assessment of any

tax imposed by this ordinance and payable by any seller, the City Manager shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this ordinance. In case such determination is made, the City Manager shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may appeal such determination as provided in Section 9. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable.

35.207 APPEAL

- (A) Any seller aggrieved by any decision of the City Manager with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Manager within fifteen (15) days of mailing of the notice of a decision. The City Manager shall fix a time and place for hearing the appeal, as prescribed by the City Council, and shall give the appellant fifteen (15) days written notice of the time and place of the hearing before the City Council.
- (B) The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal fees shall be set at \$150 for each decision appealed, and may be adjusted by Resolution of the City Council.
- (C) The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
- (D) The City Council shall afford the parties an opportunity to be heard at an appeal hearing after reasonable notice. The City Council shall take such action upon the appeal it sees fit. The City Council shall at a minimum:
 - 1) At the commencement of the hearing, explain the relevant issues involved in the hearing, applicable procedures and the burden of proof.
 - 2) At the commencement of the hearing place on the record the substance of any written or oral ex parte communications concerning any relevant and material fact in issue at the hearing which was made outside the official proceedings during the pendency of the proceeding. The parties shall be notified of the substance of the communication and the right to rebut the communication. Notwithstanding the above, the parties are prohibited from engaging in ex parte communications with the members of the City Council.
 - 3) Testimony shall be taken upon oath or affirmation of the witnesses.
 - 4) The City Council shall ensure that the record developed at the hearing shows a full and fair inquiry into the relevant and material facts for consideration for the issues properly before the City Manager.
 - 5) Written testimony may be submitted under penalty of false swearing for entry into the record. All written evidence shall be filed with the Assistant City Recorder no less than five (5) working days before the date of the hearing.

- 6) The City Council shall hear and consider any records and evidence presented bearing upon the City Manager's determination of amount due, and makes findings affirming, reversing or modifying the determination.
 - 7) Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.
- (E) The action of the City Manager shall be stayed pending the outcome of an appeal properly filed pursuant to this section.
- (F) Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal.
- (G) The finding of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

35.208 REFUNDS

- (A) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this ordinance, it may be refunded as provided in subparagraph 1. Of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the City Manager within one year of the date of the payment. The claim shall be on forms furnished by the City Manager.
1. The City Manager shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The City Manager shall notify the claimant in writing of the City Manager's determination. Such notice shall be mailed to the address provided by the claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify the City Manager of claimant's choice no later than fifteen (15) days following the date City Manager mailed the determination. In the event claimant has not notified the City Manager of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

2. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the City Manager acknowledged the validity of the claim.

35.209 ACTIONS TO COLLECT

Any tax required to be paid by any seller under the provisions of the ordinance shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Within three years after the tax becomes payable or within three years after a determination becomes final, the City may bring an action in the name of the City in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105 (as hereafter amended), in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

35.210 CONFIDENTIALITY

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this ordinance. Nothing in this section shall prohibit:

- (A) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- (B) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- (C) Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City Manager or an appeal from the City Manager for amount due the City under this ordinance; or
- (D) The disclosure of information when such disclosure of conditionally exempt information is order under public records law procedures; or
- (E) The disclosures of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

35.211 AUDIT OF BOOKS, RECORDS OR PERSONS

- (A) It shall be the duty of every seller liable for the collection and payment to the City of any tax imposed by this ordinance to keep and preserve, for a period of three years and six months, all records, books, reports, income tax reports and other matters required by this ordinance as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the City, which records the City Manager shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain records of marijuana purchase and sales, accounting books and records of income. Sellers must, at a minimum include a cash receipt and deposit journal and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. They shall also reconcile to the seller's income tax reports. If the City Manager finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the City Manager.
- (B) The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the City Manager or authorized agent of the City Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City Manager may immediately seek a subpoena from the Manzanita Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

35.212 PENALTIES FOR NON-COMPLIANCE OF CODE

- (A) It is unlawful for any seller or any other person so required to fail or refuse to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the City Manager or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.
- (B) Violation of any provision of the ordinance shall be punishable by the general penalty. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefore shall be in addition to any other penalty, interest, sum or charge imposed by this ordinance. Delinquent taxes and fees, penalty and interest imposed by this ordinance may be collected in a civil action.
- (C) In addition to the remedies provided by this section, the City Manager may, when deemed appropriate, revoke the seller's business license until taxes, penalties, and fines are paid.

(D) The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

' 35.213 FORMS AND REGULATIONS

(A) The City Manager is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form or report on sales and purchases to be supplied to all vendors;
- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this ordinance.

' 35.999 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to ' 10.99.

(B) Any person willfully violating any of the provisions of ' ' 35.015 through 35.032 shall be guilty of a misdemeanor and may be punishable therefor by a fine of not more than \$500, or by imprisonment in jail for a period of not more than six months, or by both the fine and imprisonment. (1977 Code, ' 6-13)

(C) Any person who operates or conducts himself or herself contrary to the terms of ' ' 35.045 through 35.075 shall be guilty of an offense and, in addition to the other penalties herein provided may, upon conviction in Municipal Court, be assessed a fine not to exceed \$300 for each offense.

(1977 Code, ' 6-21)

(Ord. 893, passed 5-23-1977; Ord. 1014, passed 7-19-1982)

CHAPTER 36: ECONOMIC DEVELOPMENT

Section

Procedures for the Creation of an Economic Improvement District

- 36.01 Definitions
- 36.02 Petition
- 36.03 Public hearing
- 36.04 Establishing a district; assessment of fee; hearing
- 36.05 Assessment ordinance
- 36.06 Levying assessments
- 36.07 Advisory committee
- 36.08 Uses for assessment monies

Districts Established

- 36.20 Economic improvement district established in downtown area

Cross-reference:

Local improvements districts, see TSO IV

Special assessments, see Ch. 36 and TSO IV

PROCEDURES FOR THE CREATION OF AN ECONOMIC IMPROVEMENT DISTRICT

36.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ECONOMIC IMPROVEMENT.

- (1) The planning or management of development or improvement activities;
- (2) Landscaping, maintenance and provision of security for public areas;
- (3) The promotion of commercial activity or public events;
- (4) The conduct of activities in support of business recruitment and development;

- (5) The provision of improvements in parking systems or parking enforcement; and
- (6) Any other economic improvement activity that specially benefits property.

ECONOMIC IMPROVEMENT PLAN. A plan prepared by the property owners or tenants within the proposed district or their designees setting out:

- (1) A description of economic improvements proposed to be carried out;
- (2) The number of years, to a maximum of five, in which assessments are proposed to be levied;
- (3) A preliminary estimate of annual cost of the proposed economic improvements;
- (4) The proposed boundaries designated by map or perimeter description of an economic improvement district within which subject properties would be assessed to finance the cost of the economic improvement;
- (5) The proposed formula for assessing the cost of economic improvements against subject properties, which formula may be:
 - (a) A fee paid by property owners;
 - (b) An assessment based on the assessed value of the property involved;
 - (c) A fee based on the amount of square footage of the parcel;
 - (d) A business license fee on any business, trade, occupation or profession carried on or practiced in the economic improvement district; or
 - (e) A combination of the fees and assessments.
- (6) A statement whether the property assessment will be a voluntary assessment or mandatory assessment, and:
 - (a) If voluntary, that the scope and level of improvements could be reduced depending on the amount of money collected; or
 - (b) If mandatory, that the assessment will be considered a tax under the State Constitution, Article XI, Section 11(b) and may be reduced to fit within the property tax limitation, thereby affecting the level and scope of services described.

EXEMPT PROPERTY. Residential real property and any portion of a structure used for residential purposes and, in addition, those properties exempt from general property taxation under state law.

OWNER. The owner of the title to real property or the contract purchaser of record as shown on the last available complete assessment roll in the office of the County Assessor.

SUBJECT PROPERTY. The real property within the economic improvement district except for exempt property.

(Ord. 1161, passed 3-20-2000)

‘ **36.02 PETITION.**

The City Council shall consider creation of an economic improvement district whenever owners of the properties file with the City Recorder a petition for the establishment of a district containing the signatures of the owners of 33% or more of the area of the assessed value of subject properties within the proposed district, or when the City Council, on its own motion, decides to undertake the consideration of the district. Any petition filed by the owners as set forth above shall contain a proposed economic improvement plan. If the Council, on its own motion, decides to consider such a district, it shall instruct the city staff to prepare the economic improvement plan.

(Ord. 1161, passed 3-20-2000)

‘ **36.03 PUBLIC HEARING.**

After filing of the aforementioned petition or motion of the Council to consider an economic improvement district, the City Council shall schedule a public hearing to be held on the question of establishment of a district. Notices of the proposed hearing shall be mailed or delivered personally to affected property owners and business owners, and shall announce the intention of the Council to construct or undertake the economic improvement project and to assess benefited properties or impose a business license fee for a part or all of the cost. The notice shall state the time and the place of the public hearing. This hearing shall be set not sooner than 30 days after the mailing or delivery of the notices to the affected property owners.

(Ord. 1161, passed 3-20-2000)

‘ **36.04 ESTABLISHING A DISTRICT; ASSESSMENT OF FEE; HEARING.**

If, after the hearing held pursuant to ' 36.03, the City Council determines that the economic improvements would afford special and peculiar benefit to subject parcels within the economic improvement district different in kind or degree from that afforded to the general public, and that the economic improvement district should be established, then the City Council may adopt an ordinance stating those findings and establishing the district. The Council shall then determine whether the property benefited shall bear all or a portion of the cost, and shall require notice of the proposed assessment or business license fee to be mailed or personally delivered to the owner of each lot to be assessed or business to be charged, which notice shall state the amount of the assessment proposed on the property of the owner receiving the notice, or the charge to the owner of the business receiving the notice. The notice shall state the time and place of a second public hearing at which affected property owners or business owners may appear to support or object to the proposed charge. The second hearing shall not be held sooner than 30 days after the mailing or personal delivery of the notices. At the hearing, the Council may consider objections and may adopt, correct, modify or revise the proposed assessments or charges. The ordinance will also provide that the assessments will not be made and the economic improvement project will be terminated when written objections are received at the second public hearing from owners of property upon which more than 33% of the total amount of assessments is levied, or if a business license fee is charged, from more than 33% of persons conducting business within the economic improvement district who will be subject to the proposed license fee. (Ord. 1161, passed 3-20-2000)

' 36.05 ASSESSMENT ORDINANCE.

Pursuant to the requirement as set forth above, an assessment ordinance may, at the discretion of the Council, provide that:

(A) When the Council receives written objections at the second public hearing only from owners of property upon which less than 33% of the total amount of assessments is levied, the economic improvement project may be undertaken or constructed, but that assessment shall not be levied on any lot or parcel of property if the owner of that property submitted written objection at the public hearing. Notwithstanding any other provision of law, an owner of property who fails to submit written objections at the public hearing as provided for in this subchapter shall be deemed to have made a specific request for the economic improvement services to be provided during the period of time specified in the assessment ordinance; and

(B) The Council, after excluding from assessment property belonging to the owners, shall determine the amount of the assessment on each of the remaining lots or parcels in the district. (Ord. 1161, passed 3-20-2000)

' 36.06 LEVYING ASSESSMENTS.

If written objections in the requisite 33% are not received as provided above, the City Council may adopt a final ordinance levying the appropriate assessments or business license charge. Upon adoption of the final ordinance, the City Recorder shall enter each assessment in the docket of city liens. All assessments shall be collected in the same manner as local improvement assessments. Failure to pay

may result in foreclosure in the same manner as provided for other assessments.
(Ord. 1161, passed 3-20-2000)

' 36.07 ADVISORY COMMITTEE.

Any assessment ordinance adopted as herein provided may require creation, for each economic improvement district, of an advisory committee to allocate expenditure of monies for economic improvement activities within the scope of this subchapter. If an advisory committee is created, the Council shall strongly consider appointment of owners of property within the economic improvement district to the advisory committee. An existing association of property owners or tenants may enter into agreement with the city to provide the proposed economic improvement.
(Ord. 1161, passed 3-20-2000)

' 36.08 USES FOR ASSESSMENT MONIES.

Money derived from assessments of fees levied under the procedures set forth in this subchapter shall be spent only for the economic improvements set forth in the economic improvement plan and for the cost of city administration of the economic improvement district.
(Ord. 1161, passed 3-20-2000)

DISTRICTS ESTABLISHED

' 36.20 ECONOMIC IMPROVEMENT DISTRICT ESTABLISHED IN DOWNTOWN AREA.

The Downtown Economic Improvement District should be established. The City Council hereby declares the area shown on Exhibit A attached to Ordinance 1167, which is hereby adopted by reference as if set out in full herein, to be the boundaries of the Downtown Economic Improvement District.
(Ord. 1167, passed 5-21-2001; Ord. 1168, passed 8-20-2001; Ord. 1194, passed 9-20-2004)

