

## CHAPTER 91: STREETS AND SIDEWALKS

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#### **GENERAL PROVISIONS**

##### **‘ 91.01 ADOPTING DESIGN STANDARDS AND STANDARD DETAILS.**

(A) The document entitled *Design Standards and Standard Details for the City of Tillamook* shall be adopted to provide clear and concise information to contractors, developers and engineers providing services within the city.

(B) This section will provide acceptable construction standards and specifications for all improvements and repairs within the city.

(Ord. 1160, passed 3-20-2000)

## ‘ 91.02 DEFINING CITY RIGHTS-OF-WAY.

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

1. The City of Tillamook, Oregon.

1. Individual, corporation, association, firm, partnership, joint stock company and similar entities.

***PUBLIC RIGHTS-OF-WAY.*** Include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

***WITHIN THE CITY.*** Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

(A) *Jurisdiction.* The city has jurisdiction and exercises regulatory control over each public right-of-way within the city and state law.

(B) *Scope of regulatory control.* The city has jurisdiction and exercises regulatory control over each public right-of-way within the city whether the city has a fee, easement or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way within the city whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(C) *City permission requirement.* No person may occupy or encroach on a public right-of-way within the city without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and

permits.

(D) *Obligations of the city.* The exercise of jurisdiction and regulatory control over any public right-of-way by the city is not official acceptance of the right-of-way and does not obligate the city to maintain or repair any part of the right-of-way.

(Ord. 1152, passed 3-3-1997) Penalty, see ‘ 91.99

### ‘ 91.03 SERVICE DRIVEWAYS.

(A) *Service driveway, definition.* The term ***SERVICE DRIVEWAY*** as used herein shall mean any driveway entering any street from private property and intended for use and used by the public or for private purposes.

(B) *Permit.* It shall be unlawful to construct or maintain any service driveway across any sidewalk or curbing without first obtaining a permit for the construction from the City Manager.

(C) *Specifications.* All driveways shall be constructed of 1:2:3 mix concrete, six inches thick and one and one-half inch curb face shall be retained across the driveway. The slope from the gutter to the sidewalk or property line shall be as directed by the City Manager. No curbing shall be disturbed within four feet of the regular street crosswalk, nor shall any driveway be permitted to interfere with any fire hydrant, power line or traffic sign.

(D) *Curb length.*

(1) The City Manager shall limit the curb length of all driveways as follows:

#### ***Frontage***

#### ***Maximum Length***

25 to 52.5 feet

22 feet

Over 52.5 to 75 feet

30 feet

Over 75 feet

35 feet

(2) If more than one service driveway is desired for frontage up to 105 feet, the maximum length of driveway shall be 25 feet, and not more than two driveways will be permitted. If service driveways less than 20 feet in length are desired, three 15-foot service driveways may be permitted; provided, however, that not less than 12 feet of straight curb must separate service driveways under one ownership. For any frontage in excess of 105 feet, each additional 105 feet or fraction thereof shall be considered as separate frontage. Any service driveway in excess of the above maximum lengths must receive the approval of the City Council. No driveway apron shall extend out into the street farther than the face of the curb, and under no circumstances shall the driveway apron extend into the gutter area.

(E) *Permit fees.* The permit fees for each service driveway shall be as follows: for any service driveway authorized under permit from the City Manager, \$2 for each ten feet of length, or fraction thereof; for any service driveway requiring the approval of the City Council, \$4 for each ten feet of length, or fraction thereof.

(F) *Driveway aprons.* All existing driveway aprons which extend out into the street farther than the face of the curb and into the gutter area hereby are deemed a nuisance.

(G) *Abandoned driveways.* Any existing driveway or apron which has been or shall hereafter be abandoned by the property owner, his or her heirs or assigns, is hereby deemed a nuisance and the curb and sidewalk shall be restored to its original condition, as directed, at the expense of the property owner in the manner and at the times hereinafter provided.

(H) *Conformance of existing driveways.* Any existing driveway or apron violating any of the above requirements shall be altered to conform to these requirements on or before September 1, 1950, upon written notice to the owner, agent of the owner and/or occupant of the property from the City Manager; provided, nevertheless, that in any case where the City Manager shall find that a driveway or apron constructed in violation of this subchapter was so constructed at the express direction of and to the exact specifications of the city, then the driveway or apron shall be altered at city expense. The City Manager shall cause to be served on the owner, agent of owner and/or occupant, a notice describing the property with convenient certainty by its legal description or by the street number of the building situate thereon, requiring the owner, agent of the owner and/or occupant to conform to the above requirements by September 1, 1950, or that the city will require the same to be done and the cost thereof charged as a lien against the property.

(I) *Notice to owner; liens.* The notice shall be served upon the owner, agent of the owner and/or occupant in person if he or she shall be found upon the premises within the city, and in case the owner, agent of owner and/or occupant cannot be found in person within the city after reasonable diligence and inquiry, the notice shall be posted in a conspicuous place upon the premises and a copy thereof mailed to the last known post office address of the owner, agent of owner and/or occupant if any address is known and return of service shall be filed with the Recorder. If by September 1, 1950, the owner, agent of owner and/or occupant shall have failed and neglected to conform to the requirements, the City Manager of this city shall cause the same to be done and shall

file with the Council a verified, itemized statement of the expenditure occasioned thereby, and the Recorder shall cause notice to be served upon the owner, agent of owner and/or occupant in the manner hereinbefore described that the statement will be considered and determined by the Council and a lien declared upon the property involved, the time of which meeting shall be specified in the notice not less than ten days nor more than 20 days from giving the same. The Council shall at the meeting hear any objection to the statement and by ordinance determine the correctness of the same and declare the corrected amount a lien upon the property benefited and instruct the Recorder to enter the same upon the city docket of liens in the same manner and with the same effect that the street improvement liens and sewer liens are entered; and the liens shall have the same force and effect as the street and sewer liens and shall be foreclosed in the same manner.

(J) *Penalty.* Any person violating any of the provisions of this section shall be subject to the provisions of ‘ 91.99.

(1977 Code, ‘ 2-3) (Ord. 651, passed 11-7-1949) Penalty, see ‘ 91.99

#### **‘ 91.04 DISTURBANCE OF PAVEMENT.**

(A) *Disturbance of pavement; supervision.* It shall be unlawful for any person, firm or corporation to cut any holes in paved streets, dig up any street, or in any way break the surface of the pavements or streets in the city for water or sewer purposes, or any other purpose, without first securing the consent of the City Manager. All work done pursuant to the above consent and for the above purposes shall be done under the supervision of the Superintendent of Public Works who shall have authority to control the work. All repairs of the streets or pavements thereof shall be done as the Superintendent directs with a view to preserving the same and without any cost to the city.

(B) *Penalties.* Any person, firm or corporation violating any of the terms of this section, upon conviction thereof before the City Recorder shall be punished by a fine as set forth in ‘ 91.99.

(1977 Code, ‘ 2-2) (Ord. 448, passed 7-21-1924; Ord. 861, passed 2-14-1977) Penalty, see ‘ 91.99

### ***CONSTRUCTION, ALTERATION, REPAIR AND CLEANING OF SIDEWALKS AND CURBS***

#### **‘ 91.20 DEFINITIONS.**

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

***ABNORMALLY DANGEROUS OR HAZARDOUS CONDITION.*** A two-inch or greater displacement from grade or misalignment between or within sidewalk panels or any other condition threatening the immediate health, safety or welfare interests of the public, such as any condition which risks personal injury or property damage to any disabled person, whether or not wheelchair-bound.

1. The City of Tillamook, a municipal corporation of the State of Oregon, where the provision involves a duty owed the city in either its governmental or its corporate capacity; otherwise it shall mean the officer, department or agency of the city indicated by the context or where the context does not clearly indicate a specific officer, department or agency, then the City Manager.

***COMMERCIAL PREMISES.*** Includes all premises which are not private premises.

1. Construction of sidewalks and curbs upon official grades, fixing dimensions of curbs and establishing curb lines on certain width streets and sidewalk widths.

1. The City Council.

***DANGEROUS/HAZARDOUS SIDEWALK.*** A sidewalk:

(1) With a surface that is not constructed to *City Public Works Construction Standards - Street Design Standards* (ACity Standards@);

(2) Which contains a vertical or horizontal misalignment between or within sidewalk panels, or between a sidewalk and curb, equal to three-fourths to two inches;

(3) Which contains structural defects negatively affecting pedestrian use; or

(4) Which has vegetation, whether growing on or overhanging the sidewalk, that negatively affects pedestrian use.

1. Twenty-four hour, calendar days.

1. The City Public Works Director or the duly appointed City Engineer or any consulting engineering firm who contracts with the city to provide engineering services.

**PERSON.** Every natural person, firm, partnership, association or corporation, social or fraternal organization, trust, estate, receiver, syndicate, branch of government or any group or combination acting as a unit.

1. A pedestrian walkway with permanent surfacing, which shall include curbs and road approaches crossing, adjacent to or between the walkways.

(Ord. 1205, passed 12-5-2005)

## **‘ 91.21 INDIVIDUAL LANDOWNER DUTIES; ENFORCEMENT.**

(A) *Standards and specifications.* Sidewalks and curbs shall be constructed, altered, repaired and maintained according to *City Public Works Construction Standards - Street Design Standards* (ACity Standards@) as adopted and/or amended by the Council by resolution or otherwise.

(1) A sidewalk and/or curb not conforming to City Standards shall be, and is, a public nuisance.

(2) No landowner shall allow a dangerous or hazardous sidewalk or abnormally dangerous or hazardous sidewalk to exist on his or her property. This provision shall apply to existing exterior commercial premises open to the public, to private premises adjacent to a public way, street, alley, highway or road of any kind.

(B) *Permit requirements, applications, fees and issuance.*

(1) No person shall construct, reconstruct or repair any sidewalk or curb in or upon any public street or right-of-way without first obtaining a permit from the city and complying with the provisions of the *City Street Design Standards* and the city’s tree ordinance (see Chapter 93).

(2) An application for a permit shall be filed with the city, on a form provided by the city, together with any other information and data as required by the Engineer. An applicant for a permit shall pay a permit fee to the city, which fee shall be set by Council by resolution to recover city’s actual costs of review and monitoring.

(3) Upon application and fee payment for an improvement to which this subchapter applies, city shall issue a permit. The permit shall be automatically void six months from the issue date if the improvement is not complete. If the improvement is complete and receives City Engineer final approval, then the permit shall become permanent.

*(C) Owner responsibility and liability.*

(1) The owner of real property abutting a sidewalk is liable for any personal injury or property damage which occurs because of the owner's failure to maintain the sidewalk in good repair or safe condition. The city shall not be liable under these circumstances unless the city is the owner and the city's act or failure to act is the direct and proximate cause of the injury or damage.

(2) If the city is required to pay damages for personal injury or property damage caused by the failure of an owner to maintain a sidewalk in good repair or safe condition, the owner shall reimburse the city for the full amount of the damages thus paid and for the attorney fees and cost of defending against the claim for damages. The city may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

(Ord. 1205, passed 12-5-2005) Penalty, see ' 91.99

**' 91.22 LOCAL IMPROVEMENT DISTRICT; LANDOWNER DUTIES; ENFORCEMENT.**

The Council may proceed in the manner set forth in " 36.091 through 36.113 and/or O.R.S. 223.387 et seq. for the creation of a local improvement district, as long as it is consistent with any existing city sidewalk plan, if any of the following conditions are found to exist:

(A) (1) A dangerous or hazardous condition to pedestrians or vehicular traffic exists on a sidewalk or in a street right-of-way;

(2) There is a general public health, safety and/or welfare need that a street be improved by the construction of a sidewalk thereon not to exceed one block in length if platted as a block, or 300 feet if not platted, which sidewalk would connect with the sidewalk or sidewalks already constructed on the street or cross-streets intersecting therewith; or

(3) The landowners within an area in the city specifically described request it; and

(B) Public funds sufficient to support the city's portion of the project are available and appropriated for that purpose.

(Ord. 1205, passed 12-5-2005; Ord. 1227, passed 11-19-2007)

***Cross-reference:***

*Local improvement districts, see TSO IV*

**‘ 91.23 NOTICE.**

(A) *Notice.*

(1) *Notice of public nuisances.* Upon determination by the City Manager, City Engineer or their designee that a public nuisance, dangerous/hazardous sidewalk or abnormally dangerous/hazardous sidewalk exists, a written notice of the nuisance or hazard shall be provided to the landowner and/or occupant, ordering the landowner and/or occupant to abate the nuisance, hazard or danger within 14 days of receipt of the notice.

(2) *Stay of enforcement; stay not a bar to fine.* A notice shall stay the city's enforcement until the expiration of the notice period. This means a city notice under this division (A) shall cause the city's enforcement action under this subchapter only to be stopped or Aon hold@ until the notice period ends. However, a stay of enforcement to gain compliance shall not be a bar to any fine or penalty available under any law in any later prosecution to gain compliance. This means that, even though city's enforcement action is on hold, the fines and/or penalties under any law are not on hold, but continue to accrue or increase as long as the condition constituting a violation continues to exist. A notice under this division (A) may be superseded by a subsequent notice, which subsequent notice shall control in any conflict between notices. This means the last notice issued to a landowner pursuant to this division (A) is the notice to follow as compared to any conflicting parts of (or whole) an earlier notice issued to that landowner on the same violation.

(3) *Response to abnormally dangerous condition.* Immediately upon receipt of notice of abnormally dangerous sidewalk or curb, the landowner and/or occupant shall erect legally approved and permitted safety devices to protect person(s) from the identified hazard. The safety devices shall remain in place until the hazard is repaired as directed by this section.

(B) *Notice service.* Notices shall be served in the following manner:

(1) By personally serving a written notice;

(2) By posting on the main entrance to the property or structure;

(3) By mailing first-class mail, certified, return receipt requested to the landowner of record as shown on records of the County Tax Collector/Assessor; or

(4) By any combination of the above or any other method reasonably calculated to provide actual notice to the landowner.

(C) *Notice contents.*

(1) The notice to abate shall contain:

(a) A common description of the real property by street address or otherwise on which the nuisance exists;

(b) A direction to abate the nuisance within 14 days from the date of receiving the notice;

(c) A general description of the nuisance;

(d) A statement that, unless the nuisance is abated, the city may abate the nuisance; and the cost of abatement will be charged to the person responsible;

(e) A statement that failure to abate a nuisance may cause the person responsible be cited into Municipal Court with possible imposition of a fine, as well as abatement costs;

(f) A statement that the person responsible may protest the order to abate by giving notice to the City Manager within 14 days from the date of receipt of the notice; and

(g) A statement that the person responsible may request, to the City Manager, an extension of time to abate the nuisance, not to exceed 30 days, from date of receipt of original notice.

(2) The City Manager, City Engineer or Police Department shall, upon sending out notice, also cause a report to be filed in the Police Department, documenting all action occurring with this nuisance.

(3) An error in the name or address of the person responsible shall not make the notice void.

(Ord. 1205, passed 12-5-2005; Ord. 1214, passed 11-20-2006; Ord. 1225, passed 11-5-2007) Penalty, see ‘ 91.99

## ‘ 91.24 REMEDIES.

(A) *Inspections authorized.*

(1) The City Engineer shall inspect city sidewalks and curbs as time and public funds permit:

(a) Upon City Council request;

(b) Upon any written complaint describing the nature and location of the violation;

(c) As outlined in any existing city sidewalk improvement plan; or

(d) As otherwise required to monitor the sidewalk/curb construction or repair within any city permit.

(2) Following inspection, the City Engineer shall report the Engineer’s analysis and recommended action to the Council, City Manager and/or enforcement officer.

(B) *City construction.* If a sidewalk is not constructed or repaired within the time required by the notice required by ‘ 91.23(A), (B) and/or (C), then the city may, subject to the availability and appropriation of public funds, proceed with enforcement, abatement and/or construction for all or part of the sidewalk frontage of the property. The city may assess and collect the costs for the abatement or construction as provided by this subchapter plus an administration fee of 25% of those costs. Additionally, the sidewalk may be considered a public nuisance and subject to prosecution as a violation punishable by a fine, as provided for in this subchapter. Each day a public nuisance exists shall be considered a separate offense.

(C) *Sidewalk construction requested by the property owner.* If a property owner petitions the Council for an order to build a sidewalk on the part of the street abutting his or her property, agrees to pay cash or to make an application to pay the cost in installments as provided by the Bancroft Bonding Act (as amended), waives the right of service and publication of notice of construction and consents to the assessment of the property upon which the sidewalk abuts, the Council may order the construction of the sidewalk if in its judgment the sidewalk should be built and sufficient public funds for the project are available.

(D) *Abatement by the person responsible.*

(1) Within the time specified in a notice, the person responsible shall remove the nuisance or show that no nuisance exists.

(2) A person responsible may protest that no nuisance exists by filing with the City Manager a written statement which specifies in detail the protest's bases. This statement shall be received by City within 14 days from the date of receipt of the notice.

(3) The City Manager shall have 14 days to respond from the date the City Manager receives the notice. The response shall indicate either that the nuisance no longer exists and no further action is required, or that the nuisance still exists and set a further timeline of 14 days to abate the identified nuisance.

(4) The person responsible may request an extension from the City Manager. The request must be received by the City Manager within 14 days of the person responsible receiving the notice. The City Manager may allow an extension to abate, not to exceed 30 days.

(5) Once the final date allowed to abate has passed, and the city determines the nuisance has not been abated, the Police Department shall then cite the person responsible into Municipal Court.

(6) The time here shall be extended by three days where notice or reply was served by mail.

(E) *City repair and liens.* Upon the city's completion of work placing a sidewalk or curb in good condition, a lien shall attach. Filing notice of city's claim of lien shall be consistent with O.R.S. 87.366 for claiming a lien on real property. Recording of the notice shall be with the City Recorder in the city's lien record and/or with the County Recording Officer in a book kept for the recording of liens. The city's lien shall be valid for six years, unless extended by written agreement with the landowner for two additional years. The landowners shall either pay the full amount or the city shall commence lien foreclosure within that time. Foreclosure shall be in the manner provided in O.R.S. Chapter 88. Except for tax liens, the city's lien shall be superior to all subsequently perfected liens, mortgages and/or other encumbrances, including state and federal liens, unless otherwise required by law. In suits to foreclose on a lien created here, the Court, upon entering judgment for the lien claimant, shall allow as part of the lien all monies paid for the filing and/or recording of the lien. In suits to foreclose a lien created here, the Court shall allow reasonable attorney fees, costs and disbursements, at trial and

on appeal, to the prevailing party. This division (E) is effective on the thirtieth day after its adoption on November 19, 2007.

(Ord. 1205, passed 12-5-2005; Ord. 1227, passed 11-19-2007) Penalty, see ‘ 91.99

**‘ 91.99 PENALTY.**

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

(Ord. 1301, passed 4-20-2015)