

TITLE ONE GENERAL PROVISIONS

1.001 Code Established. This code is established by City of Lowell Ordinance 238 and is hereafter referred to and cited as the Lowell Revised Code (LRC) or the Code. The contents of Title One were adopted by Ordinance 238 unless specified otherwise.

1.002 Definitions and Rules of Construction. The following definitions and rules of construction apply to the code, unless inconsistent with the intent of the council or the context clearly requires otherwise.

Administrator: The City Administrator or the Administrator's designee.

City: Lowell, Oregon

Code: The Code of Lowell, Oregon.

Computation of time: The time within which an act is to be done is computed by excluding the first day and including the last unless the last day falls upon a legal holiday as defined by state statute, in which case the last day is also excluded.

Council: City Council of the City of Lowell.

County: Lane County, Oregon.

Day: The period of time between any midnight and the midnight following.

Days: A calendar day, except when "working days" is used.

Daytime, Nighttime: "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Department, board, commission, office, officer or employee: A department, board, commission, office, officer or employee of the City.

Gender: The masculine gender includes the feminine and neuter.

Minor: A person under the age of 18 years, unless otherwise stated.

Month: A calendar month, except where otherwise provided.

Number: The singular number includes the plural, and the plural the singular.

Official time: Whenever certain hours are named, they mean the standard of time as set out in ORS 187.110.

ORS: Oregon Revised Statutes.

Owner: A fee title owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of the building or land, or venter in possession under a land sale contract.

Peace officer: A member of the Oregon State Police, a sheriff, constable, marshal, or municipal police officer or other municipal officer or employee charged with the responsibility of enforcing municipal ordinances.

Person: An individual, corporation, association, firm, partnership or joint stock company, joint venture, club, company, business trust, governmental subdivision including the State of Oregon and the U.S. Government, or public or private organization of any kind, or the manager, lessee, agent, servant, officer, or employee of any of them.

Personal property: Every species of property, except real property, as defined in this section.

Process: A writ or summons issued in the course of judicial proceedings of a civil nature.

Property: Both real and personal property.

Real property: Lands, tenements and fixtures to land.

Recorder: The City Administrator or the City Administrator's designee.

Shall, must and may: "Shall" and "must" are mandatory, and "may" is permissive.

Singular – Plural: The singular number may include the plural and the plural number, the singular.

State: The State of Oregon.

Tenant or occupant: A person holding a written or an oral lease of, or who occupies, with or without lease or right to occupy property, all or a part of a building or land, either alone or with others.

Tenses: The present tense includes the past and future tenses, and the future includes the present.

To: "To" means "to and including" when used in reference to a series of sections of this code or when reference is made to ORS.

Week: Seven consecutive days.

Working days: The days the City is officially open for business: Monday through Friday, excluding official holidays.

Writing: "Writing" includes any form of recorded message capable of comprehension by ordinary visual means. When a notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

Year: A calendar year, except where otherwise provided.

1.003 Continuation of Existing Ordinances. The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations of those provisions and not as new enactments.

1.004 Exclusions. Notwithstanding inclusion within this code of the general subject matter, in whole or in part, this code does not repeal or amend: any special ordinance affecting the general public on a temporary basis; any ordinance relating to or resulting from annexation, naming of streets and public places or property acquisition or disposal of property, vacation of streets, public places or plats; any ordinance relating to waiver of fees or code provisions, bids or contracts; any ordinance fixing or changing a zone classification of property; any ordinance relating to budget; any ordinance granting a permit; any franchise ordinance; any ordinance creating local improvement districts and spreading assessments for the improvement; any ordinance calling for an election; and any ordinance to create a special fund.

1.005 Effect of Repeal or Amendment. The repeal or amendment of an ordinance or code section shall not revive an ordinance or code section in force before or at the time the repealed provision took effect. The repeal or amendment of an ordinance or code section shall not affect a punishment or penalty, incurred before the repeal or amendment took effect, nor a suit, prosecution or proceeding pending at the time of the repeal or amendment, for an offense committed under the provision repealed or amended.

1.006 Applicability of State and Federal Statutes. All Oregon Revised Statutes and Administrative Rules and Federal Law apply to the City of Lowell. Where this code is found in conflict with State statute and Federal law, such state and federal laws take precedence.

1.007 Severability of Parts of Code. It is hereby declared to be the intention of the Council that the sections, subsections, paragraphs, sentences, clauses and phrases of this code are severable; and if any phrase, clause, sentence, paragraph, subsection or section of this code is declared by any court of competent jurisdiction to be unconstitutional or invalid, the judgment shall not affect the validity of the remaining portions of this code.

1.008 Amendment and Repeal of Code Sections. This code is the general and permanent law of the City. The Council may enact three types of general ordinances to affect this code: (1) to amend the code to change existing provisions; (2) to add new provisions to the code; or (3) to repeal existing code provisions. A general ordinance shall specifically amend or repeal a particular section of this code, and a general ordinance creating a new code section shall integrate the new section into the numbering system and organization of this code.

1.009 Distribution. Each revised code will be published and distributed to City Council members and other entities as decided by the City Administrator or directed by the City Council. The most current revision will be available for purchase by any person or entity for a fee established by resolution.

1.010-1.199 Reserved for Expansion.

CODE CONSTRUCTION

1.200 Editing of Code. In preparing the codified editions of ordinances for publication and distribution, the person responsible for editing shall not alter the sense, meaning, effect or substance of any ordinance, but may renumber sections and parts of sections of ordinances, change the wording of headings, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, strike out figures or words which are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

1.201 Revision. This code may be revised as determined necessary by the Council. Ordinances adopted between revisions will be referenced with pen in ink in an unbound master copy of the LRC maintained by the City Staff. Copies of those ordinances not yet included in the code will be maintained on file with the master code until included in the next revision.

1.202 Numbering. Each section will be numbered using a four digit number. The first number, followed by a decimal point will indicate the title. The following three numbers will indicate a section. Each title and will be numbered sequentially, starting with 1 for titles and 001 for sections. Section numbers may be skipped if being reserved for future expansion, if so noted in the code.

1.203 Subsections. The following will apply to construction of subsections:

- (a) Subsections to numbered sections will be listed alphabetically within parenthesis.
- (b) Subsections of lettered subsections identified in (a) above will be numbered sequentially within parenthesis.
- (c) Subsections of numbered subsections identified in (b) above will be listed alphabetically in capital letters.
- (d) Subsections of lettered subsections identified in (c) above will be numbered sequentially, without parenthesis.

1.204 Reference Required. The ordinances enacting or amending sections or subsections of this code must be referenced, by number, in parenthesis at the end of the appropriate section or subsection. If a section or subsection is repealed by ordinance and not replaced by an ordinance

enacting the same or a similar code subject, reference to the repealing ordinance will be placed in that section or subsection. The repealed section or subsection will then be no longer used.

1.205 Titles. The LRC shall contain the following titles:

- (a) Title One, General Provisions. Title One shall contain requirements for establishing and administering this code.
- (b) Title Two, Government and Administration. Title Two shall contain requirements dealing governing and general administration including, but not limited to, council rules, standing committees/commissions, personal management, department management, financial management, municipal court, elections, and records maintenance.
- (c) Title Three, Public Improvements. Title Three shall contain requirements dealing with non utility public improvements and standards for such improvements including, but not limited to, streets, sidewalks, parks, public buildings and facilities. It also contains approval and financing requirements for the same.
- (d) Title Four, Utilities. Title Four shall contain requirements dealing with public and private utilities including, but not limited to, water service, sanitary sewer, storm sewer, electric service, gas service, television cable service, telephone and telecommunications service and solid waste disposal service. It shall include rules, regulations, standards, financing and rates determination for the same.
- (e) Title Five, Public Protection. Title Five shall contain rules and regulations relating to maintenance of public health and civil order, protection of persons and property, and control of nuisances. It shall also establish enforcement procedures and prescribe penalties for violations.
- (f) Title Six, Vehicles and Traffic. Title Six shall contain regulations and requirements regarding all types of motorized vehicles, parking and traffic control. It shall establish enforcement procedures and prescribe penalties.
- (g) Title Seven, Business. Title Seven shall contain requirements for regulation of business including, but not limited to, restrictions, regulatory requirements, licensing and permitting of general or specific business activities.
- (h) Title Eight, Building. Title Eight shall contain building construction and specialty code standards. It shall establish building permit processes and requirements and any other regulations and restrictions pertaining to structures. Certain general development standards for building construction are also included in Title Eight
- (i) Title Nine, Land Use and Development. Title Nine shall contain provisions for land use and development not included in the Lowell Land Use Development Code. The Land Use Development Code and its amendments will be incorporated into Title Nine by reference. The City of Lowell Comprehensive Plan and its amendments will also be incorporated into Title Nine by reference.

1.206 Section Titles Not Part of Law. Section titles in this code are not part of the substance of the code.

1.207 Tables. Tables, graphs, charts or other visual aids that are adopted, but do not fit the format of this code will be referenced in the appropriate location in the code, numbered sequentially and placed at the end of each title section for quick reference.

1.208 Appendices. The following will be attached to the code as appendices:

- (a) Appendix A, City Charter.
- (b) Appendix B, Ordinance Disposition List.

- (c) Appendix C, Special Ordinance List.
- (d) Appendix D, Code Updates.

1.209-1.299 Reserved for Expansion.

ENFORCEMENT

1.300 General Enforcement. The provisions of ORS Chapter 153, and the rules adopted by the Supreme Court pursuant to ORS 153.033, establishing the procedures for enforcing city ordinance violations are hereby adopted and all violations of city ordinances shall be processed accordingly.

1.301 Violations Described. All offenses committed in violation of City Ordinances contained in the Code are considered violations as defined by ORS 153.008.

1.302 Offenses Outside City Limits. When permitted by Oregon law, an act made unlawful by this Code shall constitute an offense when committed on property owned or leased by the city, even though outside the corporate limits of the city and may be cited as a violation to this Code.

1.303 Separate Violations. When in this code an act is prohibited or is made or declared to be unlawful or an offense or the doing of an act is required or the failure to do an act is declared to be unlawful or an offense, each day an offense continues constitutes a separate violation.

1.304 Citation for Infractions.

(a) The City Administrator or any City employee authorized by the City Administrator or any peace officer may issue and serve a citation to appear in municipal court on a person who the City employee has probable cause to believe has committed an offense defined in this code.

(b) The Oregon Traffic Citation and Complaint form will be used and as a minimum, the following information will be completed on the form:

(1) The name of the person cited.

(2) A brief description of the offense, including Code section and subsection violated, with which the person is charged; the date, time, and place at which the violation occurred; the date on which the citation was issued; and the name of the person who issued the citation.

(3) The time, date, and place at which the person cited is to appear in municipal court.

(c) If a citation is issued, the person issuing the citation shall serve one copy to the person cited, and shall, as soon as practicable, file a duplicate copy with the municipal court, together with proof of service.

1.305 Right of Entry for Inspection.

(a) Except as otherwise provided in this code, when necessary to make an inspection to enforce an ordinance or resolution, or when there is reasonable cause to believe an ordinance or resolution violation exists in a building or upon premises within the jurisdiction of the city, an authorized official of the city may, upon presentation of proper credentials, enter the building or premises at all reasonable times to inspect or to perform any duty imposed on the official by ordinance.

(b) Except in emergency situations or when consent of the owner and/or occupant has been otherwise obtained, the official shall give the owner and/or occupant, if they can be located after reasonable effort, 24 hours' written notice of the official's intention to inspect.

(c) The notice to the owner and/or occupant shall state that the property owner has the right to refuse entry and that if entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate.

(d) If the owner and/or occupant refuses entry after a request has been made, the official may seek assistance from any court of competent jurisdiction in obtaining the entry.

1.306 Penalties in General. A violation of a provision of this code is punishable by a fine not to exceed \$1,000 unless a lesser amount is prescribed elsewhere in this code. Violations may also be categorized as Class A, B, C or D violations in accordance with ORS 153.012 and, if so, penalties will be as established in ORS 153.018. A violation of a provision that is identical to a state statute is punishable by a fine or imprisonment not to exceed the penalty prescribed by the state law if cited under the applicable state statute.

1.307 Payment of Penalties. Fines levied by the Municipal Court are due and payable at the time levied. The Municipal Court, at the discretion of the Municipal Judge, may extend this time or allow for installment payments. In the event of failure to pay fines levied by the Municipal Court, the Municipal Judge may take any and all actions allowed by State statute to collect such fines.

1.308-1.899 Reserved for Expansion.

MISCELLANEOUS

1.900 Interest on Money Owed City. Interest on money owed to the city shall be at the rate of 9 percent annual interest rate unless a greater or lesser rate is prescribed elsewhere in this code. Interest owed shall be compounded monthly unless prescribed differently elsewhere in this Code.

End of Title One

TITLE TWO GOVERNMENT AND ADMINISTRATION

2.000 Rules of Procedure for City Council Meetings. This section adopted by Ordinance 251 unless specified otherwise.

2.001 Meetings. The Council shall meet in regular session on the first and third Tuesday of each month in the Council chambers at a time set by the Council. If attendance at a Council meeting is expected to exceed the capacity of the council chambers, the City Administrator may select an alternative location as long as such location is publicized on the posted agenda for the meeting seven days in advance of the meeting. A meeting may be canceled with the concurrence of a majority of the council, but in no event shall there be less than one meeting per month.

2.002 Regular Meetings Falling on Holidays. If the regular meeting date of the Council falls on a legal holiday, as defined by ORS chapter 187, the meeting shall be canceled unless it is determined by the Mayor or City Administrator seven days in advance that there is urgent business that can not wait until the next regularly scheduled meeting, in which case, the meeting shall be held on the day following the scheduled meeting.

2.003 Special Meetings. Special meetings of the Council may be called at any time by the Mayor, by the Council President in the Mayor's absence or at the request of two members of the Council, by giving notice of the meeting to the Council members and the public in a manner and for a time as circumstances permit, but with a view of obtaining the largest possible attendance of Council members. Except in an emergency, as determined by the Mayor, or in the Mayor's absence, the Council President, at least 24 hours notice will be provided.

2.004 Study Sessions. Study sessions of the Council shall be held in accordance with state statutes whenever special circumstances require such a session, and the session may be called by either the Mayor or a majority of the Council.

2.005 Executive Sessions. Executive sessions may be held before, after or during regular or special meetings and study sessions, so long as appropriate statutory requirements of Oregon Public Meeting laws are met.

2.006 Council Rules in General. The Council will generally follow Robert's Rules of Order; however, it has the obligation to be clear and simple in its procedures and the consideration of the questions coming before it. It should avoid the finer points of parliamentary rules that serve only to obscure the issues and arouse the suspicions of the audience at public meetings and the citizens in general. The Mayor or Council President in the Mayor's absence shall be the final authority on procedural matters, unless objected to by a majority of the Council members present.

2.007 Quorum. The Mayor, or in his absence the Council President, shall call the meeting to order at the hour designated for the meeting. If a quorum is not present, absent members, except those known to be unavoidably detained, shall be contacted and informed that their presence is required. If the absent member or members do not appear after the notice, the members present shall adjourn until a specific time or until the next regular meeting.

2.008 Agenda. The City Administrator shall prepare an agenda of business to be presented at a regular Council meeting. No item of business shall be added to the printed agenda after 4:00 p.m. on the Thursday preceding the meeting for which the agenda has been prepared. The Council shall consider at the meeting only matters that appear on the agenda for that meeting or are introduced by a Council member, Mayor or City Administrator. Council members and the Mayor will endeavor to have subjects they wish to have considered submitted to the City Administrator in time to be placed on the agenda. Subjects not placed on the agenda will be considered under “Other Business” on the agenda.

2.009 Order of Business. The order of business at each Council meeting shall be in accordance with the agenda prepared by the City Administrator unless altered by consent of the Council.

2.010 New Business. The Mayor or a Council member may bring before the Council any new business under the “Other Business” portion of the agenda. These matters need not be specifically listed on the agenda, but formal action on the matters shall be deferred until a subsequent Council meeting unless deemed urgent by consensus of the Council.

2.011 Public Hearings. Public Hearings will normally be one of the first items on the agenda. Prior to each public hearing the presiding officer shall announce the nature of the matter to be heard and hearing procedures. The presiding officer shall then declare the hearing open and invite any member of the audience to come forward to be heard. If appropriate, the presiding officer may first ask those in favor of the stated matter to come forward, with those speaking in opposition coming after. Speakers will limit their comments to the matter being considered. The presiding officer may, with the approval of a majority of the Council present, limit the time and number of speakers at each public hearing. The presiding officer shall announce the restriction prior to commencement of the hearing.

2.012 Voting Generally.

(a) The vote on every motion shall be taken by voice vote or roll call and entered in full upon the record.

(b) If, after a voice vote, the decision is not unanimous, a roll call vote shall be used for all ordinances and resolutions. Any other question before the Council shall not require a roll call vote unless requested by any member of the Council. Members shall not explain their vote during the roll call. Any member may change his or her vote prior to the next order of business.

(c) When a vote is taken, every member shall vote unless a majority of the Council excuses the person for a special reason; but no member shall be permitted to vote on a subject in which he or she has direct pecuniary interest.

(d) Unless otherwise provided by Charter provision, the concurrence of a majority of the Council present at a Council meeting shall be necessary to decide any question before the Council.

2.013 Reconsideration of Actions Taken. A member who voted with the majority may move for a reconsideration of an action at the same or next regular meeting.

2.014 Passage of Resolutions and Ordinances. Each resolution shall be read only once before being voted on, and that reading may be by title only unless any member of the council requests the resolution be read in full. A resolution is effective immediately upon passage. Ordinances will be enacted in accordance Charter provisions.

2.015 Speaking by Council Members Generally. Every Council member desiring to speak shall address the chair and, upon recognition by the presiding officer, shall confine remarks to the question under debate.

2.016 Questioning of Administrative Staff by Council Members. Every Council member desiring to question the administrative staff shall address the questions to the City Administrator, who shall be entitled to either answer the inquiry or designate a staff member to do so.

2.017 Administrative Staff and City Employees Addressing Council or Public. Members of the city staff and other city employees desiring to address the Council or members of the public shall first be recognized by the chair and shall address the remarks to the chair. The staff may respond to questions or comments by the Council or members of the public with permission of the chair, but shall always do so in a polite, tactful manner.

2.018 Citizens Addressing the Council.

(a) An opportunity shall be provided on the agenda for public comments at the beginning of each meeting.

(b) A citizen desiring to address the Council shall wait to be recognized by the presiding officer. After recognition, the person's name and address shall be stated for the record. During public comment period on the agenda, citizens may speak on the record on any subject they wish. Action on issues raised during public comment periods will normally be deferred to subsequent meetings to allow staff to investigate the issue and make recommendations for action. For public comments on other agenda topics, remarks will be limited to the question under discussion. No person shall enter into discussion without being recognized by the presiding officer. The opportunity for public comment on agenda items is not meant to allow citizens to enter into the debate over a question before the Council, but instead is meant to allow citizen input into the Council decision making process.

(c) A citizen addressing the council shall be limited to three minutes unless further time is granted by the presiding officer. No public member shall be allowed to speak more than once upon any one subject until every other public member choosing to speak has spoken.

(d) After a motion has been made or after public hearing has been closed, no public member shall address the Council without first securing permission from a majority of the Council members present.

2.019 Sergeant-at-Arms. The sergeant-at-arms shall be the City Administrator. The sergeant-at-arms shall assist the presiding officer, as appropriate, to maintain order and decorum at all meetings.

2.020 Order and Decorum.

(a) Any of the following shall be sufficient cause for the sergeant-at-arms to, at the direction of the presiding officer, remove any person from the Council chambers, or meeting hall, for the duration of the meeting:

(1) If verbally loud or verbally disruptive so as to interfere with the business of the council

(2) Making a loud and disruptive noise so as to interfere with the business of the council.

(3) Engaging in violent and distracting conduct.

(4) Willful damage of furnishings or of the interior of the Council chambers or meeting hall.

(5) Refusal to obey the rules of conduct provided within this ordinance, including limitations on occupancy and seating capacity.

(6) Refusal to obey an order of the presiding officer or an order issued by a councilor which has been approved by a majority of the Council present.

(b) Before the sergeant-at-arms is directed to remove any person from the meeting hall for conduct described in subsection (a), that person shall be given a warning by the presiding officer to cease the prohibited conduct or actions.

(c) If a meeting is disrupted by members of the audience, the presiding officer or a majority of the Council present may order that the Council chambers or other meeting hall be cleared.

2.021 Seating Capacity. The safe occupancy and seating capacity of the Council chambers as determined by the Fire Marshal shall be posted. The limitations on occupancy and seating capacity shall be complied with at all times.

2.022 Flags, Signs and Posters. No flag, posters, placards or signs, unless authorized by the presiding officer, may be carried or placed within the Council chambers, any meeting hall in which the Council is officially meeting, or any meeting hall in which a public hearing is being held. This restriction does not apply to armbands, emblems, badges or other articles worn on personal clothing of individuals, provided such devices are of such size and nature as not to interfere with the vision or hearing of other persons at the meeting, and providing that such devices do not extend from the body in a manner likely to cause injury to another. Visual aids required for presentations to the Council shall be permitted with prior coordination with the City Administrator.

2.023 News Media. The provisions of this ordinance shall not be construed to prevent news media representatives from performing their duties so long as the manner of performance is not unreasonably disruptive of the meeting.

2.024-2.029 Reserved for Expansion.

PLANNING COMMISSION

2.030 Planning Commission Established. There is hereby established a City Planning Commission for the City of Lowell under the following policy. (Sections 2.130 through 2.136 adopted by Ordinance 229 unless indicated otherwise.)

2.031 Membership. Membership of the Commission shall consist of five members, all of whom must reside within the Lowell city limits. Members may not be elected officers or employees of the City. Membership will be in compliance with ORS 227.030.

2.032 Term of Office. Members of the Planning Commission shall be appointed as provided by State law, City Charter and City ordinance for a term of two years. Expiration of the terms will be staggered such that the terms of three members expire on December 31st of odd numbered years and the terms of two members expire on December 31st of even numbered years.

2.033 Vacancies and Removal. Appointments to fill vacancies shall be for the remainder of the unexpired term. Planning Commission members serve at the pleasure of the City Council. A member who is absent for three consecutive meetings without an excuse, approved by the Planning Commission, is rebuttably presumed to be in nonperformance of duty and the City Council shall declare the position vacant unless finding otherwise following a hearing.

2.034 Presiding Members. At its first meeting of each calendar year, the Commission shall elect a chairperson and vice chairperson to serve one year terms. The City Administrator or other staff member designated by the City Administrator shall keep accurate records of all Commission proceedings.

2.035 Meetings. A majority of the members of the Planning Commission shall constitute a quorum. The Commission shall meet at least once a month, on a regularly scheduled date and time determined by the Commission, unless the Chairperson and City Administrator jointly agree that there is no business to be conducted. All meetings will be in accordance with the Oregon Public Meetings Act.

2.036 Powers and Duties. The Commission shall have the powers and duties which are now or may hereafter be assigned to it by Charter, ordinances or resolutions of the City of Lowell and general laws of the State of Oregon.

2.037-2.039 Reserved for Expansion.

CITY ADMINISTRATOR

2.040 City Administrator Position Established. (Sections 2.040 through 2.042 adopted by Ord 211 unless indicated otherwise.) The Office of City Administrator for the City of Lowell is hereby established. The City Administrator shall be selected by the City Council for the City of Lowell and shall be compensated such salary as determined by the Common Council of the City of Lowell. When the administrator is absent from the City or disabled from action as administrator, or when the office of administrator is vacant, the Council shall appoint an administrator pro tem who has the powers and duties of administrator, except that the administrator pro tem may appoint and remove employees only with Council approval. No person may be administrator pro tem more than one year. (Amended Ord 242)

2.041. The City Administrator shall be the administrative assistant to the City Council and shall perform such tasks as directed by the City Council.

2.042 Duties and Responsibilities. The City Administrator shall have the following, more specifically described duties and responsibilities (amended, Ord 242). The City Administrator shall:

- (a) Manage and supervise all day-to-day operations of the City. (amended, Ord 242)
- (b) Have the responsibility of securing compliance with City ordinances, policies and directives of the City Council.
- (c) Periodically report to the City Council the status of all assignments, duties and projects.
- (d) Be responsible for preparing and submitting to the Budget Committee the annual budget estimates and such analysis and reports as that body may request, or which may be requested by the City Council in that regard.

- (e) Have the duty of handling public relations problems and/or complaints that may arise concerning the City and the residents of the City.
- (f) Act as purchasing agent, contract manager and business representative for the City, but shall not, without the specific approval of the City Council, bind the City for any single transaction that is not an itemized item in the approved annual budget in excess of \$5,000 or enter into any contract for an amount in excess of \$5,000. The City Administrator may delegate this authority to the Public Works Director for public works related transactions. (amended, Ord 242)
- (g) Keep aware of all expenditures by the City for the purpose of keeping all expenditures within the budget of the City. The Administrator shall report to the City Council the financial condition of the City at least quarterly and make recommendations to the Council as to the future needs of the City. (amended, Ord 242)
- (h) Act as staff representative in dealing with other governmental bodies at all time taking into consideration the policies of the Council. The Administrator shall be responsible for the preparation of any reports and forwarding of any information required by other governmental agencies.
- (i) Recommend to the City Council the adoption of policies and/or ordinances that are deemed necessary for the welfare of the City of Lowell.
- (j) Attend all meeting of the City Council unless excused therefrom and shall be prepared to answer any and all questions that can be anticipated to be discussed by the city Council at said meetings.
- (k) Have the authority to manage and discipline employees including suspension without pay according to the personnel manual.
- (l) Have the authority to fire and fire employees within the budgetary restrictions of the City. (amended, Ord 242)

2.043 Office of City Recorder and City Administrator Combined. (Adopted by Ord 224)

The offices of City Recorder and City Administrator are hereby combined. When performing any of the duties or responsibilities of the City Recorder under the Charter, the City Administrator shall sign any documents associated therewith as City Recorder.

2.044-2.049 Reserved for Expansion.

MUNICIPAL COURT

2.050 Municipal Court and Judge. Sections 2.050 through 2.058 are adopted by Ordinance 261 unless specified otherwise.

2.051 Municipal Court Established. The City of Lowell hereby establishes a Municipal Court, the Office of Municipal Judge and the position of Court Clerk. When not governed by ordinances or the Charter for the City of Lowell, proceedings of the Municipal Court shall conform to the general laws of the State of Oregon governing Justices of the Peace and Justice Courts.

2.052 Municipal Judge.

- (a) The City Council will appoint a person licensed to practice law in the State of Oregon by the Oregon Supreme Court to serve as the Municipal Judge.
- (b) The Municipal Judge will be appointed by the City Council for a four year term, commencing on January 1st of every other odd numbered year beginning in 2009. Once appointed, the

Municipal Judge may only be removed from office by the City Council upon a finding of judicial misconduct by a competent authority, loss of a license to practice law or expiration of the term of office. For the purpose of implementing this section, the person holding the position of Municipal Judge at the time of adoption of this section shall remain in the position until December 31, 2008.

(c) The City Council shall determine the compensation, if any, to be paid the Municipal Judge. Such compensation shall be negotiated and agreed upon prior to appointment and shall not be reduced during the term of office.

(d) The Municipal Judge, with consent of the City Council, may appoint a pro tem Municipal Judge. The person appointed as the pro tem Municipal Judge shall have the same qualifications as the Municipal Judge and will be compensated at the same rate and in the same manner as the Municipal Judge.

2.053 Court Clerk. The City Administrator will appoint a qualified City Staff member to serve as Court Clerk. While performing Court Clerk duties, the staff member so appointed will work under the direction of the Municipal Judge.

2.054 Time and Place. The Lowell Municipal Court shall normally meet in session at least one time each month, normally on the third Thursday of each month at 7:00 p.m. at City Hall. The Municipal Judge may reschedule or cancel a monthly Court date if such rescheduling or cancellation is done and notice is sent at least 10 days prior to the regularly scheduled court date.

2.055 Jurisdiction.

(a) All area within the City and, to the extent provided by State law, areas outside the City are within the territorial jurisdiction of the Municipal Court.

(b) The Municipal Court shall have original jurisdiction over every offense that an ordinance of the City makes punishable and may enforce forfeitures and other penalties such ordinances prescribe, except as precluded by paragraph d below.

(c) The Municipal Court shall have jurisdiction over every offense that is made punishable by the Oregon Vehicle Code except as precluded by paragraph d below.

(d) The Municipal Court shall not have jurisdiction over any matter which requires a jury trial or any matter where any party could request a jury trial.

2.056 Authority of the Municipal Court Judge. Consistent with the jurisdiction established in Section 2.055, the Municipal Court Judge may:

(a) Render judgments and, for enforcing them, impose sanctions on persons and property within the Court's territorial jurisdiction.

(b) Order the arrest of anyone accused of an offense against the City.

(c) Commit to jail or admit to bail anyone accused of such an offense.

(d) Issue and compel obedience to subpoenas.

(e) Compel witnesses to appear and testify.

(f) Penalize contempt of Court.

(g) Issue process necessary to effectuate judgments and orders of the Court.

(h) Issue search warrants.

(i) Perform other judicial and quasi-judicial functions prescribed by ordinance.

2.057 Constitutionality or Validity of Charter or Ordinance Provisions.

(a) Whenever the validity of a charter or ordinance provision becomes an issue in a trial for violation of the charter or ordinance provision, the Municipal Judge shall determine such issue of validity and make a decision and order thereon before making any decision as to the facts in the particular case.

(b) In all cases involving the constitutionality of the charter provision or ordinance under which the violation was determined, such person shall have the right of appeal to the circuit court in the manner provided in ORS 221.350.

2.058 Appeal. Whenever any person is found to be in violation in the Municipal Court of any charter or ordinance defined and made punishable by ordinance, such person shall have the same right of appeal to the Lane County Circuit Court as if from a finding of violation in Justice Court. The appeal shall be taken and perfected in the manner provided by law for taking appeals from Justice Court. The Municipal Court Clerk shall provide any person wishing to appeal a decision of the Municipal Court instructions in writing regarding filing of an appeal.

2.059 Reserved for Expansion.

CITY ATTORNEY

2.060 City Attorney. Sections 2.060 through 2.063 are adopted by Ordinance 262 unless specified otherwise.

2.061 Appointment of City Attorney. The City Council will enter into a personal services agreement with a person licensed to practice law in the State of Oregon by the Oregon Supreme Court to serve as the City Attorney. Selection and approval of the personal services agreement will be in accordance with **LRC 2.106**.

2.062 Responsibilities. Responsibilities of the City Attorney are as follows:

(a) Provide legal advice to the City Administrator, other City Staff and City Council members.

(b) Represent the City of Lowell as City Attorney in all legal matters as directed by the City Administrator except as excluded in 2.063 (b).

(c) Prosecute violations of the charter or ordinances of the City of Lowell and defend the City in the Lowell Municipal Court or other appropriate court or appellate body.

2.063 Supervision and Direction. The City Attorney shall be under the supervision of the City Administrator and take legal action only upon the direction of the City Administrator with the following exceptions:

(a) The City Attorney may provide legal advice directly to the City Staff and City Council members, but may take legal action only with approval of the City Administrator or by a majority decision of the City Council.

(b) If, in the opinion of the City Attorney, there is a legal issue between City and the City Administrator, the City Attorney will notify the Mayor and City Administrator in writing and effective the date of the such notification all supervision and direction of the City Attorney will transfer to the City Council or to a Council member or other person designated by a majority of the City Council.

2.064-2.099 Reserved for Expansion.

PUBLIC CONTRACTING

2.100 Policy. (Sections 2.100 through 2.116 adopted by Ordinance 243 unless specified otherwise.)

(a) Purpose of Public Contracting Regulations. These regulations are promulgated by the City Council, which is hereby designated as the local Contract Review Board (“Board) for the City of Lowell; for the purpose of establishing the rules and procedures for contracts entered into by the City of Lowell. It is the policy of the City in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximizes the efficient use of public resources and the purchasing power of public funds by:

- (1) Promoting impartial and open competition;
- (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
- (3) Taking full advantage of evolving procurement methods that suit the contracting needs of the City as they emerge within various industries.

(b) Interpretation of Public Contracting Rules. In furtherance of the purpose of the objectives set forth in subsection (a) above, it is the City’s intent that the City of Lowell’s public contracting regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

2.101 Application of Public Contracting Regulations.

(a) In accordance with ORS 279A.025, the City’s public contracting regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.

(1) Between Governments. Contracts between the City and a contracting agency or between the City and an agency of the federal government.

(2) Grants. A grant contract is an agreement under which the City is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions. The making or receiving of a grant is not a Public Contract subject to the Oregon Public Contracting Code; however, the expenditure of any grant received by the City is subject to these Regulations and the expenditure of Grants made by the City to construct a Public Improvement or Public Works project is subject to these Public Contracting Regulations.

(3) Legal Witnesses and Consultants. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested.

(4) Real Property. Acquisitions or disposals of real property or interests in real property.

(5) Textbooks. Contracts for the procurement or distribution of textbooks.

(6) Oregon Corrections Enterprises. Procurements from an Oregon corrections enterprises program.

(7) Finance. Contracts, agreements or other documents entered into, issued or established in connection with:

A. The incurring of debt by the City, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special, or limited;

B. The making of program loans and similar extensions or advances of funds, aid or assistance by the City to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;

C. The investment of funds by the City as authorized by law, or

D. Other predominantly financial transactions of the City that, by their character, cannot practically be established under the competitive contractor selection procedures, as determined by the City Administrator.

(8) Employee Benefits. Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.

(9) Exempt Under State Laws. Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of state law.

(10) Federal Law. Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

2.102 Regulation of City Council. Except as expressly delegated under these regulations the City Council reserves to itself the exercise of all of the duties and authority of a Contract Review Board and a Contracting Agency under State Law, including, but not limited to, the power and authority to:

(a) Solicitation Methods Applicable to Contracts. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts.

(b) Brand Name Specifications. Exempt the use of brand name specifications for public improvement contracts.

(c) Waiver of Performance and Payment Bonds. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies.

(d) Electronic Advertisement of Public Contracts. Approve the electronic advertisement as a sole means to advertise public contracts.

(e) Appeals of Debarment and Prequalification Decisions. Hear properly filed appeals of the City Administrator's determination of debarment, or concerning prequalification;

(f) Rulemaking. Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements.

(g) Award. Award all contracts that exceed the authority of the City Administrator.

2.103 Model Rules. The Model Rules adopted by the Attorney General under ORS 279A.065, do not apply to the contracts of the City; except when the City Administrator deems they are necessary to supplement this Ordinance, and then they will apply only to the extent that they do not conflict with the contracting regulations adopted by the Board.

2.104 Definitions. For the purposes of these regulations, the following mean:

Addendum or Addenda: Additions or deletions to, material changes in, or general interest explanations of the city's Solicitation Documents.

Affected Person: A Person whose ability to participate in a procurement is adversely affected by the City.

Authorized Representative: The owner of a sole proprietorship, a partner in a firm or partnership, or, a person authorized to bind by a corporation's board of directors.

Award: The selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City until the contract is executed and delivered by the City.

Bid: A binding, sealed, written offer to purchase surplus property, or provide goods, services or public improvements for a specified price or prices.

Bid or Proposal Bond/Bid or Proposal Security: A means of securing execution of an awarded contract.

Bidder: An Offeror who submits a bid in response to the City's Invitation to Bid.

Board: The local contract review board, which is the Lowell City Council.

Closing: The closing of a solicitation is the end of the period in which bids or proposals may be submitted. The closing date and time must be specified in the solicitation documents.

City: City of Lowell, Oregon

Cooperative Procurement: A procurement conducted by or on behalf of one or more contracting agencies.

Conduct Disqualification: A disqualification pursuant to ORS 279C.440.

Concession Agreement: A contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, goods or services, specified by the City Administrator, from real property owned or managed by the City, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license, lease, or permit for the use of the premises.

Contract: See definition for "Public Contract."

Contract Price: The total amount paid or to be paid under a contract, including bonuses, incentives, contingency amounts, approved alternatives, and any fully executed change orders or amendments; if the Contractor fully performs under the Contract; or the maximum not-to-exceed amount of payments specified in the Contract; or the unit price for Goods or Services or Personal Services set forth in the Contract.

Contractor: The Person with whom the City executes a Public Contract.

Debarment: A declaration by the Board or City Administrator under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City's public contracts for a prescribed period of time.

Disposal: Any arrangement for the transfer of property by the City under which the City relinquishes ownership.

Emergency: Circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and requires prompt execution of a contract to remedy the condition.

Energy Savings Performance Contract: A contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

Findings: Are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

Goods and services/goods or services: Any item or combination of supplies, equipment, materials and services other than personal services designated under ORS 279A.055, or other personal property, including tangible, intangible and intellectual property and rights and licenses in relation thereto.

Informal Solicitation: A solicitation made in accordance with the City's public contracting regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals. Invitation to bid: A publicly advertised request for competitive sealed bids.

Model Rules: The public contracting rules adopted by the Attorney General under ORS 279A.065.

Nonresident Bidder: A bidder who is not a resident bidder as defined in this section.

Offeror: A person who submits a bid, quote or proposal to enter into a public contract with the City.

Opening: The date, time, and place announced in the solicitation document for the public opening of written, sealed offers.

Oregon Public Contracting Code: ORS chapters 279A, 279B and 279C.

Owner: The City of Lowell, acting through its legally constituted City Council.

Person: A natural person or any other private or governmental entity having the legal capacity to enter into a binding contract.

Proposal: A binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

Personal Services: The services or type of services performed under a Personal Services Contract.

Personal Service Contract: 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, administrators, artists, computer programmers, consultants, designers, performers and property managers. The City Administrator shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Procurement: The act of purchasing, selling, leasing, renting or other acquisition or disposal by the City of goods, services, public improvements, public works and personal property and personal services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a contract, administer a contract and obtain the performance of a contract under the State Public Contracting Code.

Public Contract: A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. Public Contract does not include grants.

Public Improvement: A project for construction, reconstruction or major renovation on real property by or for the City. "Public Improvement" does not include

(a) Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Qualified Pool: A pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

Quote: A price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

Request for Proposals: A publicly advertised request for sealed competitive proposals.

Resident Bidder: A bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

Solicitation: An invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City with respect to a proposed project, procurement or other contracting opportunity. The work "solicitation" also refers to the process by which the City requests, receives, and evaluates potential contracts and awards public contracts.

Solicitation Agent: With respect to a particular solicitation or contract the staff member charged with the responsibility for conducting the solicitation and making an award, or making a recommendation on award to the Board.

Solicitation Documents: All informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

Standards of Responsibility: The qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

(a) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;

(b) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

(c) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

(d) Qualified legally to contract with the City;

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and

(f) Not been debarred by the City, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus Property: Personal property owned by the City which is no longer needed for use by the City.

2.105 Authority of City Administrator.

(a) General Authority.

(1) Solicitation Agent. The City Administrator is designated as the solicitation agent for all City contracts and concession agreements. The solicitation agent may award contracts, for which the contract price does not exceed \$50,000, without additional authorization of the Board;

provided there is a current fiscal year budget appropriation; or supplemental budgetary authority from the City Council, with respect to the contract, is approved. For all other contracts the solicitation agent shall conduct the solicitation and make a recommendation to the Board. The solicitation agent shall award all concession agreements, that can be awarded under an informal solicitation or by direct appointment, and shall have authority to award all purchases of surplus property.

(2) Execution and Delivery. The City Administrator has the authority to execute and deliver on behalf on the City all contracts that the City Administrator has the authority to award, and all amendments to such contracts. All other contracts and amendments shall be executed by the Mayor or other officer designated by the Board.

(3) Promulgation of Forms and Materials. Subject to the provisions of this Code, the City Administrator may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City's contracting needs. The City Administrator shall hear all solicitation and award protests.

(b) Delegation of City Administrator's Authority. Any of the responsibilities or authorities of the solicitation agent or the City Administrator under this paragraph a above may be delegated to department heads.

(c) Solicitation Preferences. When possible, the City Administrator shall use solicitation documents and evaluation criteria that:

(1) Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and

(2) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

(d) Purchasing From City Officials. The City Administrator shall not make any purchase of goods and services from any City official, or any business with which a City employee is associated; except when the purchase is expressly authorized by the Board; or during a state of emergency. In any situation in which the City Administrator believes that a purchase would cause an appearance of impropriety, regardless of whether the purchase is prohibited by this or any other public contracting code provision, the City Administrator may forward the proposed purchase to the Board for approval.

(e) Mandatory Review of Rules. Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify the Model Rules, the City Administrator shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the Board any modifications required to ensure compliance with statutory changes.

2.106 Personal Service Contracts. Personal services contracts are subject to the regulations established by this section. Following are procedures for the Screening and Selection of Persons to Perform Personal Services:

(a) Any Personal Services Contract. Personal services contracts in any amount may be awarded under a publicly advertised request for proposals in accordance with ORS 279B.060

(b) Discretionary Award. The following contracts may be awarded under any method deemed in the City's best interest by the city administrator, including by direct appointment; subject to approval by the city council when required by this ordinance.

(1) Contracts for which the solicitation agent estimates that payments will not exceed \$20,000 in any fiscal year.

- (2) Contracts for legal services for the City.
- (3) City engineering contracts.
- (c) Personal Service Contracts Not Exceeding \$150,000. Contracts for personal services, for which the estimated contract price does not exceed \$150,000, may be awarded using an informal solicitation for proposals.
- (d) Personal Service Contracts for Continuation of Work. Contracts of not more than \$200,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition, if the prior contract was awarded under a competitive process, and the city administrator determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
- (e) \$75,000 Award from Qualified Pool. Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.

2.107 Public Contract Exemptions and Process for Approval of Special Solicitation Methods.

(a) Authority of the City Council. In its capacity as contract review board for the City, the City Council upon its own initiative, or upon request of the City Administrator, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

(b) Basis for Approval. The approval of an exemption from competition or special solicitation methods must be based upon a record before the Board that contains the following:

- (1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
- (2) The estimated contract price or cost of the project, if relevant;
- (3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
- (4) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
- (5) A description of the proposed alternative contracting methods to be employed; and
- (6) The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the Board may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

(c) Hearing.

(1) Notice. The City shall approve the special solicitation or exemption after a public hearing before the Board following notice by publication in at least one newspaper of general circulation in the City. The notice shall be published at least seven days prior to the hearing. The Notice shall state that the purpose of the hearing is to consider findings in support of, as applicable:

- A. A special procurement for a single contract or classes of contracts under ORS 279B.085; or
- B. An exemption from competitive bidding for a single contract or class of contracts under ORS 279C.335.

The notice shall describe how copies of the draft findings may be obtained for review prior to the hearing and state that persons who wish to comment on or protest the considered action may appear and present testimony at the hearing.

(2) At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.

(3) The Board will consider the findings and may approve the special solicitation or exemption as proposed or as modified by the Board after providing an opportunity for public comment.

(4) If the Board approves the special procurement(s) or exemptions(s) at the public meeting of the City Council following the hearing, or at a subsequent public meeting of the City Council, no published notice of the approval shall be required.

(d) Public Improvement Contract Exemption Special Requirements.

(1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.

(2) The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

(e) Commencement of Solicitation Prior to Approval. A solicitation may be issued prior to the approval of a special exemption under this Section, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Board approves the exemption. If the Board fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

2.108 Solicitation Methods for Classes of Public Contracts. The City may encourage meaningful competition through a variety of solicitation methods. The solicitation agent shall choose the solicitation method that is most likely to encourage offers representing optimal value to the City. The following classes of public contracts and the method (s) that are approved for the award of each of the classes are hereby established by the Board. However, nothing in this section may be construed as prohibiting the City from conducting a procurement under competitive bidding or competitive proposal procedures.

(a) Small Procurements - Direct Purchase or Appointment. The following classes of contracts may be awarded in any manner, which the solicitation agent deems appropriate to the City's needs, including by direct purchase or appointment.

(1) Contracts Up to \$5,000. Contracts of any type for which the contract price does not exceed \$5,000, may be awarded as a small procurement.

A. Notwithstanding any other provisions of the City, a Contract awarded as a small procurement may be amended or re-negotiated without additional competition, with prior approval of the City Administrator if it is advantageous to the City; but the cumulative amendments shall not increase the total Contract Price to greater than \$6,000.

B. State law prohibits a procurement from being artificially divided or fragmented, so as to constitute a small procurement under this section.

(2) Amendments. Contract amendments shall not be considered separate contracts, if made in accordance with the Public Contracting Regulations.

(3) Advertising. Contracts for the placing of notice or advertisements in any medium.

(4) Animals. Contracts for the purchase of animals.

(5) Small Concessions. Concession agreements for which the City Administrator estimates that receipts by the City will not exceed \$5,000 in any fiscal year, and \$50,000 in the aggregate may be awarded by any method deemed appropriate by the Solicitation Agent; including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

(6) Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.

(7) Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without preliminary dismantling or testing.

(8) Government Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

(9) Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(10) Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.

(11) Sole Source Contracts. Contracts for goods or services, which are available from a single source, may be awarded without competition.

(12) Specialty Goods for Resale. Contracts for the purchase of specialty goods by City for resale to consumers.

(13) Sponsor Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.

(14) Structures. Contracts for the disposal of structures located on City-owned property.

(15) Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

(16) Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.

(17) Temporary Use of City-Owned Property. The City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process if:

A. The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;

B. The proposed use of the property is consistent with the City's use of the property and the public interest; and

C. The City reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.

(18) Used Property. The City Administrator, for procurements up to \$50,000 may contract for the purchase of used property by negotiation, if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City. There shall be a written record of the purchase.

(19) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

(20) Hazardous Material Removal and Oil Clean-up. The City may acquire services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466.

(b) Intermediate Procurements – Informal Solicitation. The following classes of contracts may be awarded using the informal solicitation procedures in Section 2.110. State law prohibits a procurement from being artificially divided or fragmented, so as to constitute an intermediate procurement under this section.

(1) Public Improvement Contracts.

A. Non-Transportation Public Improvements Up to \$100,000. Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price exceeds \$5,000, but does not exceed \$100,000, may be awarded using an informal solicitation for quotes. **Contracts in excess of \$100,000, unless approved for a special exemption, shall be issued in accordance with the provisions of ORS 279C.**

B. Transportation Public Improvements Up to \$50,000. Contracts for which the estimated contract price exceeds \$5,000, but does not exceed \$50,000, for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes. **Contracts in excess of \$50,000, unless approved for a special exemption, shall be issued in accordance with the provisions of ORS 279C;**

C. Requests for a price quotation for a public works projects estimated to exceed \$25,000 shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage

D. If the estimated cost is less than \$25,000, but all price quotations equal or exceed \$25,000, then the solicitation shall be cancelled and a new request for written price quotations, containing the BOLI provisions regarding prevailing wage shall be included.

E. Use of Existing Contractors. When a public improvement is in need of minor alteration, repair or maintenance at or near the site of work being performed by another City contractor, the City may hire that contractor to perform the work provided:

1. The contractor was hired through a competitive selection process permitted by these regulations.
2. The solicitation agent first obtains a price quotation from the contractor that is competitive and reasonable or based on unit prices in the current contract;
3. Any prevailing wage requirements are complied with, and
4. A change order is issued for the work.

(2) Contracts for Goods and Services Exceeding \$5,000. The procurement of goods or services, for which the estimated contract price exceeds \$5,000, but not exceeding \$150,000, may be awarded under an informal solicitation for either quotes or proposals. **Public contracts for good or services in excess of \$150,000 shall be let in accordance with the provisions of ORS 279B.**

(3) Intermediate and Major Concessions. For Concession Agreements for which receipts by the City exceed \$5,000 in a fiscal year or \$50,000 in the aggregate, and the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less; the City Administrator has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals. Major concession agreements, for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually, shall be awarded using a request for proposals.

(c) Hybrid Contracts. The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

(1) Design/Build and CM/GC Contracts. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method may be approved by the Board if the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city.

(2) Energy Savings Performance Contracts. Unless the contract qualifies for award under another classification in this Section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City's Public Contracting Regulations.

(d) Purchases from Nonprofit Agencies for Disabled Individuals. The City shall purchase goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

(e) Emergency Procurements.

(1) In General. When an official with authority to enter into a contract on behalf of City determines that immediate execution of a contract, within the official's authority, is necessary to prevent a substantial risk of loss, damage or interruption of services; or a substantial threat to property, public health, welfare or safety, the official may execute the contract without competitive selection and award or City approval; but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

(2) Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the City Administrator or Board has made a written declaration of emergency. Any public improvement contract awarded under emergency conditions must be awarded within 60 Days following the declaration of an emergency, unless the Board grants an extension of the emergency period. All such contracts, whether or not signed by the contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the contract at its discretion and, unless the contract was void, the City shall pay the contractor only for work performed prior to the date of termination plus the contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the City Administrator or Board may waive the requirement for all or a portion of required performance and payment bonds.

(3) Reporting. An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, document the nature of the emergency; and for Good or Services contracts, describe the method used for the selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public; and notify the Board of the facts and circumstances surrounding the emergency execution of the contract.

(f) Surplus Property.

(1) Disposal of Property with Minimal Value. Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the estimated value of the item and the manner of disposal.

(2) General Methods. Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the City. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City. The Solicitation Agent shall maintain a record of the manner of disposal, including the name of the person to whom the surplus property was transferred.

A. Auction. By publicly advertised auction to the highest bidder.

B. Bids. By public advertised invitation to bid.

C. Donation. By donation to any non-profit cause or organization operating within or providing a service to residents of the City.

D. Governments. Without competition, by transfer or sale to another public agency.

E. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

F. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.

G. Trade-In. By trade-in, in conjunction with acquisition of other price-based item under procurement. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.

(3) Restriction on Sale to City Employees. City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

(4) Personal-Use Items. An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the city administrator.

(5) Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver, a bill of sale signed by the City Administrator, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

(g) Federal Purchasing Programs. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.

(1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the city administrator. The Solicitation Agent shall provide the city administrator with a copy of the letter, memorandum or other documentation from GSA establishing permission to the City to purchase under the federal program.

(2) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

(3) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.

(4) If a single purchase of goods or services exceeds \$150,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City.

(h) Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code, ORS 279A.200-225.

(i) Report to City Council on Non-Bid Public Improvement Projects.

(1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts described in ORS 279A.050 (3) (b), in excess of \$100,000; for which the City did not use the competitive bidding process, City staff shall prepare and deliver to the City Council an evaluation of the public improvement project, or class of public improvement contracts. The evaluation shall include but not be limited to the following matters:

- A. The actual project cost as compared with original project estimates;
- B. The amount of any guaranteed maximum price;
- C. The number of project change orders issued by the Owner;
- D. A narrative description of successes and failures during the design, engineering and construction of the project; and
- E. An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

(2) Evaluations required by this section must be made available for public inspection, and be completed within 30 days of the date that the Contracting Agency accepts:

- A. The public improvement project; or
- B. The last public improvement project if the project falls within a class of public improvement contracts.

2.109 Sole Sources.

(a) Determination of Sole Source. A sole source contract is a contract with a vendor who is the only responsible source for the goods, services, or personal services required by the City. A determination of sole source may be made by the city administrator based upon written findings that demonstrate that the contractor is a sole source, and that alternative goods, services, or personal services would be unsatisfactory for the City's needs based on factors that may include any of the following:

- (1) A record that no qualified vendors responded to a notice issued in accordance with Subsection (b) below;
- (2) A written statement from a manufacturer established as a sole source that the product is only available to the City from a single point of sale;
- (3) Written evidence that the contract is for a patented product and that the proposed vendor is the exclusive holder of a right to sell the product;
- (4) Records of research that demonstrate that only one suitable source for the goods or service exists and that alternate goods or services do not meet the City's requirements, including, without limitation, that efficient utilization of existing goods requires the acquisition of compatible goods or services; or
- (5) A statement that the goods or services are for use in a pilot or experimental project.

(b) Manner of Notice. The record that a contractor is a sole source may be established if no qualified alternative sources responded to a public notice of the City's requirements. The notice shall be published at least five business days before contract execution and shall:

- (1) Describe the goods, services, or personal services sought;
- (2) State the estimated amount of the contract;

(3) Request statements of ability to provide the identified goods, services or personal services from vendors who are qualified to compete for the contract, and

(4) State that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Manager will proceed with a sole-source award.

(c) Method of Selection. Sole source contracts may be awarded pursuant to direct negotiation with the sole source contractor, without competitive solicitation.

2.110 Informal Solicitation Procedures and Qualified Pools. When authorized by these regulations the City may use the following procedures for informal solicitations, and a contract may be awarded using the informal solicitation procedures described in this section.

(a) Record of Contract Requirements and Evaluation Criteria. The solicitation agent shall make a written record of the contract requirements and criteria upon which the award will be based before conducting the solicitation. This record shall be used to provide all potential offerors with the same information concerning the contract requirements and the manner in which their offers will be evaluated.

(b) Contact with Potential Offerors. The solicitation agent request for quotes or proposals may be by general or limited distribution to a certain group of vendors, by direct inquiry to Persons selected by the Solicitation Agent, or in any other manner that the Solicitation Agent deems suitable for obtaining a sufficient number of competitive quotes or proposals.

(c) Number of Offers. The Solicitation Agent shall attempt to obtain at least three Responsive quotes or proposals from offerors who are qualified to perform the contract unless three offers cannot be reasonably obtained. If fewer than three quotes or proposals are reasonably available, fewer will suffice, but the Solicitation Agent shall make a record of the efforts made to obtain the offers. (ORS 279B.070; Section 133, Chapter 794, Oregon Laws 2003)

(d) When Written Solicitation Required. The request for offers and the receipt of offers shall be made in writing in the following cases:

(1) Contracts for Goods, Services or Personal Services. If the estimated Contract Price will exceed \$75,000, the Solicitation Agent shall request written quotes or proposals using a written description of contract requirements and award criteria.

(2) Contracts for Public Improvements. The Solicitation Agent shall request written quotes for all public improvement contracts, and shall present the description of contract requirements and award criteria using written materials unless the information can be given by other means in a conference or oral presentation at which all potential offerors are present and have an opportunity to ask questions. Notwithstanding the foregoing sentence, when soliciting quotes for a public works project, the Solicitation Agent must deliver all written materials, including written copies of the prevailing wage rates required by the Bureau of Labor and Industries.

(e) Basis for Award. Selection of contractors for goods, services and personal services shall be based on the quote or proposal that is most advantageous to the City. The selection criteria for public improvement contracts shall be based on quotes but may include a consideration of, and ranking of other factors in addition to, price, such as experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors. The Solicitation Agent shall make a written record of all offerors, the prices quoted and, if the award was made on a basis other than price, a record of the evaluation of each offer and the basis for award.

(f) Discussions and Negotiations. The Solicitation Agent may discuss the solicitation requirements for any type of informal solicitation with potential offerors and may discuss a quote or proposal with an offeror to clarify its quote or proposal or to effect modifications that will make the quote or proposal responsive to the solicitation requirements. Except for solicitations

involving public improvements, after all initial quotes have been received and recorded, the solicitation agent may negotiate with an offeror to effect modifications that will make the quote or proposal more advantageous to the City. The Solicitation Agent may not disclose the price offer or terms of one offeror to another during discussions prior to contract award.

(g) Amendment. A contract awarded using an Informal Solicitation may be amended only as provided in these regulations.

(h) Qualified Pools.

(1) Purpose of Qualified Pools. In lieu of prequalification on a contract-by-contract basis, the City may establish qualified pools that can be used on a continuous basis for the selection of contractors when direct appointment or Informal Solicitation is otherwise authorized by these regulations.

(2) Creation of Qualified Pool. To create a qualified pool, the City Administrator may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services and public improvements.

(3) Advertisement. The invitation to participate in a qualified pool shall be advertised, at the discretion of the Solicitation Agent, by publication in a newspaper of general circulation in the Lowell area, by electronic publication as permitted in these regulations or by any other method that the Solicitation Agent deems desirable to develop a sufficient pool of qualified vendors. The advertisement shall be made at the time of initial formation and whenever the qualified pool contract is subject to re-opening or renewal. If the pool is open to entry at any time, and is continuously advertised on the City's website, no additional advertisement shall be required.

(4) Qualification for Participation. A qualified pool shall be open for entry not less than once in each three years. Standards for participation in a qualified pool may include the applicant's financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City. The City may also require, as a condition to participation, that the applicant furnish additional materials such as proof of licensure, insurance, insurance endorsements to protect the interests of the City, material concerning performance and fidelity bonds, and that the applicant agree to the terms and conditions of participation in the qualified pool. The qualifications for participation in each qualified pool shall be set forth in writing, but may be changed at any time, provided that all participants are notified of the change.

(5) Contents of Solicitation. Requests for participation in a qualified pool shall describe the scope of goods or services or personal services for which the pool will be maintained, and the minimum qualifications for participation in the pool.

(6) Use of Qualified Pools. The Solicitation Agent may use a qualified pool to make direct appointments as authorized in these regulations or to obtain quotes or proposals for an informal solicitation, but shall not be limited to selection from a qualified pool. Participation in a qualified pool shall not entitle any participant to the award of a City contract.

(7) Amendment and Termination. The Solicitation Agent may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

(8) Protest of Failure to Qualify. The Solicitation Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal the Solicitation Agent's decision to the City Administrator in the manner described in Section 2.115.

2.111 Requirements for Invitation to Bids, and Request for Proposals. Unless otherwise provided in these regulations, all formal bids, and proposals made to the City shall:

- (a) Be in writing.
- (b) Be filed with the Solicitation Agent before the closing. Any offer received after the closing is late. An Offeror's request for withdrawal or modification of an offer received after the closing is late. The City shall not consider late offers or late modification of an offer or late withdrawal of an offer.
- (c) Be opened publicly by the City at the date, time and place designated in the solicitation.

2.112 Use of Brand Name Specifications for Public Improvements.

(a) In General. Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:

(1) It is unlikely that such exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; or

(2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City; or

(3) There is only one manufacturer or seller of the product of the quality required; or

(4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

(b) Authority of City Administrator. The City Administrator shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of Subsection (a).

(c) Brand Name or Equivalent. Nothing in this Section prohibits the City from using a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City, or from establishing a qualified product list.

2.113 Bid, Performance and Payment Bonds.

(a) Solicitation Agent May Require Bonds. The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.

(b) Bid Security. Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$75,000 shall require bid security. Bid security for a request for proposal may be based on the City's estimated contract price.

(c) Performance Bonds.

(1) General. Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bonds.

(2) Contracts Involving Public Improvements. Prior to executing a contract for more than \$50,000, that includes the construction of a public improvement, Contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the City and any public agency that is providing funding for the project for which the contract was awarded.

(3) Cash-in-Lieu. The City Administrator may permit the successful offer or to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

(d) Payment Bonds.

(1) General. Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.

(2) Contracts Involving Public Improvements. Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

(e) Design/Build Contracts. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

(f) Construction Manager/General Contractor Contracts. If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by Subsection (a) of this Section upon execution of an amendment establishing the guaranteed maximum price. The City shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

(g) Surety; Obligation. Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the City or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the City Administrator.

(h) Emergencies. In cases of emergency, or when the interest or property of the City probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of **Section 2.108 (e)**, unless the Board requires otherwise.

2.114 Electronic Advertisement of Public Contracts. In lieu of publication in a newspaper of general circulation in the City area, the advertisement for an invitation to bid or request for proposals for any type of public contract may be published electronically by posting on the City's website, provided that the following conditions are met:

(a) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

(b) The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the area and will provide costs savings for the City, or that the use of electronic

publication will be more effective than publication in a newspaper of general circulation in the area in encouraging meaningful competition.

2.115 Protests and Appeals.

(a) Protests of Solicitation Procedures.

(1) Protests Generally. A prospective offeror for a public contract may file a protest with the City if the prospective offeror believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective offeror fails to timely file such a protest, the prospective offeror may not challenge the contract for any of the foregoing reasons in any future legal or administrative proceeding.

(2) Exception for Special Procurements. The procedures for a contract-specific special procurement approved by the board may not be protested, challenged or reviewed unless the approval of the special procurement by the board has been invalidated by a reviewing circuit court under ORS 279B.400.

(3) Time for Submission of Protest. Protests of a Solicitation shall only be considered when presented to the City Administrator in writing in accordance with the following timelines.

A. Protests shall be submitted in writing, not less than five (5) days prior to the solicitation closing unless the solicitation period is shorter than seven (7) days, in which case, the solicitation documents shall recite another protest deadline that allows a period of at least one (1) business day after the issue date of the solicitation to submit protests; and

B. Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.

(4) Identification of Protest. It is the protester's responsibility to ensure that the protest is received by the City within the stated timelines. The protest should be delivered in an envelope that is clearly marked with the protester's name and sufficient information to identify the solicitation being protested, identified as a protest, and directed to the person identified in the solicitation documents for receipt of protests. Faxed protests will not be accepted.

(5) Eligibility for Consideration. The City Administrator shall consider the protest if the protest is timely filed and contains the following:

A. Sufficient information to identify the solicitation that is the subject of the protest;

B. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;

C. Evidence or supporting documentation that supports the grounds on which the protest is based; and

D. The relief sought.

(6) Form of Decision. If the protest is timely submitted and contains the required information, the City Administrator shall consider the protest and issue a decision in writing. Otherwise, the City Administrator shall promptly notify the prospective protesting offeror that the protest is untimely or that the protest failed to meet the requirements of this Section and give the reasons for the failure.

(7) Time of Decision. The City Administrator shall issue a decision no less than 72 hours before the solicitation closing, unless a written determination is made by the City Administrator that circumstances exist that require a shorter time limit.

(8) Appeal.

A. If the protest was decided by a designee of the City Administrator, it may be appealed to the City Administrator by notifying the City Administrator of the intent to appeal within three business days after the date on which the decision was sent to the protestor's electronic or postal address specified in the written protest.

B. If the protest is to a solicitation to be awarded by the City Council, the City Administrator's decision on the protest may be appealed to the City Council by notifying the City of the intent to appeal within three business days after the date on which the decision was sent to the protestor's electronic or postal address specified in the written protest.

(9) Finality of Decision. The decision of the City Administrator, for those solicitations awarded by the City Administrator or designee, or the decision by the City Council, for those solicitations awarded by the City Council, shall be the final determination of the City on the protest.

(10) Delay of Solicitation Closing. If the City receives a protest from an offeror in accordance with this Section, the City Administrator may in his or her discretion extend the date of solicitation closing if the City Administrator determines an extension is necessary to consider the protest and, if necessary, to issue addenda to the solicitation documents or otherwise cancel the solicitation.

(b) Protest of Competitive Range Decisions and Contract Awards.

(1) Delay of Evaluation or Award. The City Administrator will not proceed with a subsequent tier or evaluation, or award a contract under an Invitation to bid or request for proposals, until the period of time for filing a protest of competitive range determination, or award, as applicable, has expired, and the City Administrator has responded to all timely filed protests of aggrieved offerors.

(2) Definition of Aggrieved Offeror. An offeror is an aggrieved offeror only if the person is one to whom a notice of selection of a competitive tier or notice of intent to award has been, or should have been, sent, and such person has been erroneously denied the award of a contract, or has been erroneously eliminated from competition because:

A. All higher-ranked offers were non-responsive or all higher-ranked offerors clearly failed to meet the standards of responsibility;

B. The evaluation of offers was not conducted in accordance with the criteria or processes described in the solicitation documents;

C. The evaluator abused its discretion in disqualifying the protestor's offer as non-responsive or as failing to meet the standards of responsibility; or

D. The evaluation of offers or subsequent determination of award was otherwise made in violation of the Oregon Public Contracting Code or these regulations.

(3) Filing of Protests. Unless a longer or shorter time period is provided in the solicitation documents, an aggrieved offeror shall have five (5) days after the date of issuance of the notice of intent to award, and three (3) days, if mailed, or 72 hours, if issued electronically after a notice of competitive range determination, to submit to the City Administrator a written protest of the matter described in the award. The written protest must specify the grounds upon which the protest is based, demonstrate the basis for the protestor's status as an aggrieved offeror, and include an electronic or postal address at which the protestor will receive the City Administrator's response. Notwithstanding the foregoing, the period of protest may not be shorter than five (5) days after the date of notice of award, unless the City Administrator determines that the immediate execution of a contract is necessary to avoid a loss of funding for the contract or that further delay in execution will result in injury, property damage or other serious adverse consequences.

(4) Authority to Resolve Protests. The City Administrator shall consider a written protest and issue a written decision on the protest. The City Administrator may not consider a protest that is filed in an untimely manner or that fails to allege facts that would support a finding that the protestor is an aggrieved offeror. Appeals to protest decisions shall be submitted and decided in the same manner as described in **Section 2.115 (a) (8) and (9)**.

(5) Delay of Award; Cancellation of Solicitation. If the City receives a protest from an offeror in accordance with this Section, the City Administrator shall not submit the contract for execution until the protest is resolved through the final decision under subparagraph (4) above. In addition, the City Administrator shall have discretion to delay or cancel an award or a solicitation in response to a protest, regardless of the final decision on the protest, and may, but shall not be required to, reissue the solicitation, if the City Administrator determines that such action best serves the City's interests.

(c) Appeal of Debarment or Prequalification Decision.

(1) Right to Hearing. Any person who has been debarred from competing for City contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this Section.

(2) Filing of Appeal. The person must file a written notice of appeal with the City Administrator within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.

(3) Notification of City Council. Immediately upon receipt of such notice of appeal, the City Administrator shall notify the City Council of the appeal.

(4) Hearing. The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

A. Promptly upon receipt of notice of appeal, the City shall notify the appellant of the time and place of the hearing;

B. The City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the City Administrator; and

C. At the hearing, the City Council shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

(5) Decision. The City Council shall set forth in writing the reasons for the decision.

(6) Costs. The City Council may allocate the City Council's costs for the hearing between the appellant and the City. The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the City Council's opinion, warrant such allocation of costs. If the City Council does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City, if the decision is overturned.

2.116 Public Contracts Amendments.

(a) Amendment Defined. An amendment is any change or modification of any term or condition of a contract or any addition or deletion of any term or provision of a contract. Amendments include, but are not limited to change directives, change orders, and any addition, deletion or modification that affects the nature, quantity, degree, or scope of the goods or services or improvements to be provided under a contract or the time of performance or price or that affects any provision concerning the rights or obligations of a party.

(b) Writing and Signature Requirements. No amendment will be binding on the City unless set forth in writing and signed by an official who is duly authorized to bind the City in the manner described by the amendment.

(c) Amendments That Increase Price. Except in connection with a contract renewal or extension, no contract may be amended to increase the contract price unless the increase is directly related to an increase in the quantity or types of goods or services to be provided, a betterment in the quality of goods or materials to be provided, or to compensate the contractor for delays occurring after the execution of the contract for which the City is responsible. Amendments that increase the contract price are further limited as follows:

(1) Price Established by Contract. Amendments that increase the quantity of goods or services to be provided under the contract and for which unit prices were established in the original contract (for example, by weight, volume, itemized equipment price lists, or hourly fees) shall be permitted without limitation.

(2) Price Not Established by Contract. Amendments that increase the contract price and that are not described in **Section 2.108 (a)** may not, in the aggregate, increase the total amount to be paid under the contract by more than twenty-five percent (25%) of the original contract price unless approved in advance by the City Council.

(3) Contracts Issued Under Price-Based Solicitation. Except in an emergency, or under a waiver approved by the City Council, a contract awarded under a solicitation method based on contract price may not be amended if the resulting contract price would exceed either of:

A. The limitations on amendment under **Section 2.108 (a)**, as applicable, or

B. 125% of the maximum contract price for the class of contracts under which the Solicitation was conducted.

(d) Time. The time of performance under a contract, or the term of an expiring contract, may not be extended by amendment except as provided in the original contract or on a temporary basis as provided in **Section 2.108 (a)**.

2.117-2.179 Reserved for Expansion.

ELECTIONS

2.180 Elections. Sections 2.181 through 2.190 are adopted by Ordinance 233 unless indicated otherwise.

2.181 City Elections Officer. The City Administrator is designated the City Elections Officer and is responsible for insuring that rules, regulations and procedures regarding City elections required by Oregon Revised Statutes, the Secretary of State's Office, the Lane County Elections Office, the City Charter and this Ordinance are complied with.

2.182 Election to City Office. The City will not utilize the State Biennial Primary Election to elect candidates to any City elected position. All Candidates will compete for elected positions at the State Biennial General Election with the candidate or candidates receiving the most votes for a particular position being elected to that position. Vacancies that occur on January 1st of the next year, as a result of having no candidate for a position, will be filled using the process established for filling vacancies in Section 28 of the City Charter.

2.183 Filing for City Elective Office. Candidates for City elective office must meet qualifications required by the City Charter and comply with all requirements prescribed in the City Charter and/or Oregon Revised Statutes and as outlined in the most current City Elections Manual published by Oregon Secretary of State Elections Division with the following exceptions or additional requirements:

- (a) Candidates may file by declaration. A fee of \$25.00 must be paid to the City of Lowell if filing by declaration.
- (b) Candidates filing by petition are required to collect valid signatures as required by the City Charter.
- (c) Candidates filing by petition are responsible for getting petition signatures verified by the Lane County Elections Office.

2.184 Recall. Recall of elected City officials will be conducted in accordance with Oregon Revised Statutes as outlined in the most current Recall Manual published by the Oregon Secretary of State Elections Division.

2.185 Initiative and Referendum Measures Submitted by Petition. For Initiative and Referendum measures submitted by petition, the City will follow the procedures and requirements established by the Oregon Constitution and Oregon Revised Statutes and as outlined in the most current City Elections Manual published by Oregon Secretary of State Elections Division with the following exceptions or additional requirements:

- (a) The City Elections Officer will consult with the City Attorney to make the determination as to whether or not the proposed initiative meets the single subject requirement.
- (b) If the Chief Petitioner requests in writing or a majority of the City Council request an Explanatory Statement for the Voters' Pamphlet, the Explanatory Statement will be written and approved by a committee consisting of the Mayor, one other member of the City Council selected by majority vote of the Council and the Chief Petitioner or a person designated in writing by the Chief Petitioner. The Explanatory Statement must be written, reviewed by the City Attorney, approved in writing by the majority of the committee and submitted to the City Elections Officer within 30 days of the committee being appointed.

2.186 Referendum Measures Submitted by the City Council. The City Council may refer any matter before it, not specifically precluded by state law, to the voters upon a majority vote of all Council members. For any measure that is referred by the City Council, the following process applies:

- (a) The City Attorney will prepare a Ballot Title not later than a date specified by the City Council.
- (b) The City Administrator will prepare a draft Explanatory Statement not later than a date specified by the Council. The Council may appoint a person or persons other than the City Administrator to draft the Explanatory Statement,
- (c) The Ballot Title and Explanatory Statement must be approved by a majority of the Council present at the meeting at which they are considered.
- (d) Upon approval of the Ballot Title, the Elections Officer will publish notice of receipt of the Ballot Title as required by state law.
- (e) If no petition is filed with the Circuit Court for a different ballot title, the Elections Officer shall submit the approved Ballot Title and Explanatory Statement to the Lane County Elections Office to be placed on the ballot for the next available State election date, unless a different date has been specified by the Council.

2.187 Emergency Elections. Emergency elections shall be in compliance with ORS 221.230. A decision to conduct an emergency election shall require a majority vote of all Council members.

2.188 Elections Financial Reporting. Election financial reporting will be in accordance with state law. It is the responsibility of candidates, chief petitioners, campaign treasurers and/or committee chairs and treasurers to submit all required forms and reports prior to due dates established in the most current Secretary of State Elections Division Campaign Finance Manual. All submissions will be made to the City Elections Officer and the City Elections Officer will maintain all such forms and reports on file as required by state law.

2.189 Campaigning. Persons campaigning for national, state and local candidates or measures will comply with all federal and state rules and regulations regarding campaign activities. The following additional campaign rules apply to all campaigns conducted in the City of Lowell:

(a) Campaign signs shall not be placed within the public rights-of-way or on public property.

(b) Campaign flyers and other campaign literature shall not be distributed in a manner that will create a litter nuisance or is not permitted by law.

(c) Campaigning is not allowed at public meetings of the City of Lowell with the exception of the public comment period identified on the agenda and such comments must be in accordance with established meeting rules. Campaign signs will not be displayed at public meetings of the City.

2.190 Enforcement and Penalties.

(a) Enforcement and assessment of penalties for violation of state election law will be accomplished by the Oregon Secretary of State Elections Division in accordance with established state law and procedures. Any citizen or official of the City may file a complaint of violation of election law with the Elections Division.

(b) Enforcement of this Ordinance as it relates to City campaign restrictions is the responsibility of the City Elections Officer. Violators may be cited into Municipal Court and fined in an amount not to exceed \$250.

2.191-2.207 Reserved for Expansion.

FINANCE

2.208 City Fee Policy Established. The City of Lowell hereby establishes the following policy relative to charging fees for City permits and services (Ord 228):

(a) Fees charged by the City for permits and services will be adopted by Resolution of the City Council. Actual fee amounts that are prescribed in any ordinance of the City that predates the effective date of this ordinance are superceded by a fee resolution adopted subsequent to the effective date of this ordinance and are hereby repealed upon adoption of said fee ordinance.

(b) Where ordinances of the City or State Statutes prescribe methodology for establishing specific fees, that methodology remains in effect and will be utilized to determine fee amounts.

(c) Where no other methodology exists, fees will be established to recoup all direct and reasonable indirect costs associated with processing and approving a permit or providing a service.

(d) Fees must be paid upon application or request for a specific permit or service.

(e) Fees will be reviewed periodically as determined by the City Administrator for adequacy. When new fees are required or existing fees amended, the City Administrator will present an appropriate resolution to the City Council for adoption.

(f) A public hearing will be conducted before adoption of any fee resolution.

2.209 Cost Reimbursement Policy. (Ord 228)

(a) The City may require reimbursement of costs associated with processing and deciding an application to the City for a permit or service of the City, for which no fee is established or for which the actual costs to the City exceed established fees by 25%. This requirement applies to all Land Use Applications. Only direct costs associated entirely with processing and deciding an application for a permit or service may be required to be reimbursed.

(b) Reimbursement of costs for consultants or contractors will be at invoice amount plus 10% administrative fee for all such costs originating from contractors or consultants of the City. The administrative fee is to cover costs to the City to coordinate and administer the activities of consultants or contractors.

(c) Reimbursement for City staff time, not included in the above administrative fee, will be determined based on an hourly rate established by Resolution and set to cover both direct and reasonable indirect costs associated with the staff position being billed. Staff time will be billed in one quarter hour increments rounded down to the nearest quarter hour.

(d) Reimbursement of supply, equipment, publishing and other non-personal service costs will be at actual cost.

(e) Upon request, the City will provide an estimate of the expected costs associated with a specific permit or service being requested. The City is in no way bound by this estimate and actual costs that exceed the estimate are reimbursable.

(f) Applicants for permits or services that require or may require reimbursement of costs under provisions of this section will be provided a copy of this Ordinance and will be required to sign a statement acknowledging that they have received a copy of this ordinance, understand the reimbursement policy and their appeal rights and agree to pay reimbursement costs for their application for a permit or service unless appealed. Where there is a City application form used to request a permit or service which is signed by the applicant, this statement will be included on the application form.

(g) The City may bill for reimbursement any time after costs have been incurred. The City will provide a final accounting of reimbursable costs and final bill within 120 days of the final action of the City on an application for permit, service or other request of the City. Invoices used to determine reimbursable costs will be provided with any billing upon request of the applicant.

(h) The applicant must make payment, in full, to the City within 30 days of the date the bill requesting reimbursement was mailed unless other arrangements are approved by the City Administrator.

(i) The applicant may appeal the bill requesting reimbursement to the City Administrator. Said appeal must be in writing and be submitted within 15 days of the day the billing was mailed. The City Administrator will provide an administrative decision on the appeal within 10 days of receipt. The applicant must pay, within 5 days, any reimbursable costs determined to be appropriate in the administrative decision of the City Administrator. The administrative decision of the City Administrator may be appealed to the City Council. An appeal to the City Council must be in writing and be made within 15 days of the date the City Administrator's decision was mailed. The City Council will hear and decide the appeal and order a refund of any reimbursements made in excess of their decision on the appeal. The City Council's decision on the appeal is the final decision of the City.

(j) Should an applicant for a permit, service or other action of the City fail to reimburse the City for costs under the provisions established in this section, the City Council may deny or withdraw the approval or permit, place a lien on real property owned by the applicant and associated with the requested action and/or take action pursuant to any other remedy provided for by law.

2.210-2.308 Reserved for Expansion.

BUDGET

2.309 Policy for Accounting Fund Establishment and Deletion. The following policy is hereby adopted relative to establishing new or eliminating existing accounting funds within the annual budget (Ord 226):

- (a) Requirements for new accounting funds will be identified in the annual budget proposed by the City Budget Officer and will be reviewed and approved by the Budget Committee pursuant to Local Budget Law. With the exception of Internal Service Funds, adoption of the Annual Budget by Resolution of the City Council constitutes final authority to establish new accounting funds contained in the budget.
- (b) When an accounting fund is no longer required, transfers of monies contained in the fund to the General Fund or other fund that meets the requirements of ORS 294.475 will be proposed by the budget officer and be approved by the Budget Committee pursuant to Local Budget Law. Adoption of the Annual Budget Resolution and a subsequent Resolution to approve the transfer of funds constitutes final authority to close the fund. The fund will automatically cease to exist when no longer required to be identified as historical data in the annual budget.

2.310-2.399 Reserved for Expansion.

PUBLIC RIGHTS OF WAY

2.400 Public Rights-of-Way. Sections 2.400 through 2.417 are adopted by Ordinance 258 unless otherwise specified.

2.401 Definitions. For the purpose of this section, the following mean:

- (a) Landscaping: Any improvement of the right-of-way that involves movement of soils or change of grade, planting of vegetation or placing of decorative items.
- (b) 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.
- (c) Within the City: Territory over which the City now has or acquires jurisdiction for the exercise of its powers.

2.402 Jurisdiction. The City of Lowell has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city charter and state law.

2.403 City Permission Requirement. No person may occupy or encroach on a public right-of-way without the permission of the City. The city grants permission to use rights-of-way by franchises, licenses and permits.

- (a) Franchises. Franchises are established by separate ordinance for long term use of rights-of-way throughout the City to provide utilities and other services to the general population of the City. Requirements, conditions and compensation for the use the rights-of-ways are established in the ordinance.
- (b) Licenses. Licenses for long term use of specific portions of public rights-of-way for a specific business related purpose may be granted by the City Council after review and

recommendation of the city staff. **LRC Sections 2.408 through 2.412** establish requirements and process for right-of-way licenses.

(c) Permits.

(1) Temporary Use Permits are issued for uses of specific portions of public rights-of-way for periods of time less than 30 days continual use and may be approved for commercial and residential uses. Each period of use requires a new permit. Temporary Use Permit applications must be submitted in accordance with **Section 2.414** and may be approved by the City Administrator. Temporary Use Permit fees will be established by resolution.

(2) Long Term Use Permits are issued for private residential uses of specific portions of public rights-of-way for periods exceeding 30 days. Application requirements are contained in **Section 2.413**. Such permits will be approved by the City Council which may require compensation commensurate with the proposed use and proposed duration of the use. Application fees for such permits will be established by resolution. Long term commercial uses must be approved through the right-of-way license process established in **Sections 2.408 through 2.412**.

2.404 City Permission Not Required. City permission is not required for the following uses:

- (a) Parking of private, currently registered and operable vehicles associated with private residences in public rights-of-way if there is no impact on traffic movement or vision clearance.
- (b) Parking in marked or designated areas of the public rights-of-way in commercial and industrial areas. Parking in such rights-of-way can not be used to meet parking requirements required by the Lowell Land Development code.
- (c) Delivery vehicles parked in the right-of-way for the purposes of loading and unloading as long as there is no impact on traffic movement or visual clearance. Under no circumstances will such vehicles park in the travel lanes of any street.
- (d) Use of the right-of-way for construction related purposes. If such construction impedes or occupies normal travel lanes, traffic control measures must be in place.

2.405 Landscaping in Public Rights-of-Way. Landscaping of unimproved portions of public right-of-ways adjoining private property is allowed and encouraged without a license or permit under the following conditions:

- (a) The landscaping shall not encroach on streets, required shoulders, drainage ditches, pedestrian walkways, bike paths or other such uses of the rights-of-way. Landscaping must also not impact vision clearance or otherwise create unsafe conditions in the right-of-way. Such landscaping is limited to unimproved rights-of-way immediately adjacent to the property of the person installing or maintaining such landscaping.
- (b) No trees shall be planted without permission of the City. Landscaping is limited to grass, ground cover, plants not to exceed two feet in height and/or rock.
- (c) It is the responsibility of the property owner to maintain landscaping of right-of-ways adjacent to their property. This responsibility extends from any paved or unpaved vehicle travel surface to the property line and includes any shoulder or drainage area. Existing shrubs and trees are to be maintained so as not to encroach on vehicle travel lanes and required shoulders or to interfere with vision clearance at driveways and street corners. Dead or dying vegetation must be removed. Grass, ground cover and noxious vegetation as defined by **Section 5.120** must be mowed and controlled.
- (d) The landscaping will not be replaced or the property owner compensated if landscaping must be damaged or removed for installation or maintenance of utilities, street repair, drainage improvements or other such public purposes.

2.406 Obligations of the City. The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right of way, and does not obligate the city to maintain or repair any part of the right-of-way.

2.407 County Owned Right-of-Ways within the City of Lowell. Lane County, through the Lane County Public Works Department, retains control of the use of all public right-of-ways owned by the County within the incorporated boundaries of the City of Lowell. The requirements of Sections 2.400 through 2.416 apply to County owned rights-of-way to the extent that they do not conflict with County standards and requirements for use of County owned rights-of-way with the following modifications:

(a) Applications for licenses pursuant to Sections 2.408 through 2.412 and for long term or short term use permits pursuant to Sections 2.413 and 2.414 must be accompanied by evidence that required permission and/or permits have been obtained from Lane County Public Works or that no permit is required.

(b) A separate City of Lowell right-of-way excavation permit required by **Section 2.415** is not required for County owned rights-of-way. The appropriate County permit is required.

2.408 Right-of-Way License Requirements. No person shall hang, install, lay, place, construct or locate (hereafter "locate") or obtain ownership of any wire, cable, fiber cable, pipe, conduit, structure, equipment or other material designed for the purpose of transmitting or transporting physical objects, electronic current or light signals or for business purposes (hereafter "facility") in, upon, beneath, over or across any public right-of-way or public property within the corporate limits of Lowell without first obtaining a right-of-way license from the City.

2.409 License Exceptions.

(a) No person that holds a valid franchise granted by the City of Lowell need apply for a right-of-way license to perform actions consistent with and authorized by the franchise.

(b) The City of Lowell and all City employees in the performance of their duties as City employees are exempted from the requirement to obtain a right-of-way license before taking action in the public right-of-way or on City property.

(c) Lane County, the State of Oregon and the United States Government are exempted from the requirement to obtain a right-of-way license where the City has been informed of the proposed activities to take place in the right-of-way and has approved the activities.

(d) A right-of-way license shall not be required for a person who proposes to use the right-of-way or City property for a temporary use, for a duration of 30 days or less, where such temporary use is authorized by law or a short term right-of-way use permit has been acquired in accordance with **Section 2.415**.

2.410 Restrictions on a Right-of-Way License.

(a) No right-of-way license shall be granted when, in the opinion of the Lowell City Council, a grant of a right-of-way license would be detrimental to the public health, welfare or benefit of Lowell or the residents of Lowell.

(b) No right-of-way license shall be granted for an applicant who would otherwise be required to obtain a franchise from the City of Lowell. This restriction shall apply, but is not otherwise limited to, any person that seeks to use the public right-of-way for the purpose of providing services to two or more persons residing within, or properties located within the City of Lowell.

(c) No right-of-way license shall be granted to a person who will not have and retain ownership of the facilities proposed to be located in the public right-of-way. No right-of-way license shall be granted to a person who is not authorized to transact business in the State of Oregon.

(d) No right-of-way license shall be granted to a person who has submitted an application that is in any way determined by the Lowell City Council to be incomplete, unless the applicant is able to remedy the incompleteness of the application within a reasonable time prior to the issuance of a right-of-way license and is not otherwise ineligible for a right-of-way license.

(e) The decision to grant a right-of-way license, or deny an application for a right-of-way license, shall be a decision solely within the discretion of the Lowell City Council, who may consult with any person deemed appropriate in the course of making a decision on such application.

2.411 Application for a Right-of-Way License.

(a) An application for a right-of-way license shall be submitted to the City in letter format. The application shall be typed and shall contain the signature of a person authorized to make decisions for and bind the applicant. The application shall state the name of the applicant, the address of the applicant, the registered agent in the State of Oregon of the applicant (if applicable), the nature of, and intended purpose of, the proposed facilities and the name, address and phone number of an individual who may be contacted in the event of an emergency or when deemed necessary by the City.

(b) The application shall be accompanied by:

(1) Engineered drawing or plans showing the nature of the facilities proposed to be installed, including the dimensions of the facility or facilities, the composition of all materials to be used, the method of proposed installation, including size of any trenching that might be required in the course of installation, the nature of the proposed use of the facilities, and such other information as determined to be necessary by the City to make a determination concerning the appropriateness of granting a right-of-way license.

(2) A map or maps showing the proposed location of the facilities in the public right-of-way and on, under or across other property within Lowell. The map or maps shall be of sufficient size and detail to allow the City to determine the exact place or places where the facility is proposed to be located. The map shall include the location of any physical conditions of significance to the proposed location of the facilities, and shall include the location of any structure or building within 20 feet of any portion of the proposed location of the facility.

(3) A non-refundable application fee, established by resolution, shall be required with submittal of the application. The applicant is also responsible to reimburse the City for all costs, which exceed the established fee, for the City to process the application, upon receipt of an itemized invoice of such costs. Such costs shall be reimbursed before a right-of-way license is issued.

2.412 Terms for Grant of a Right-of-Way License. A right-of-way license approved by the City shall be effective upon fulfillment of the following terms and conditions, and shall remain in effect only during the period that any of the terms and conditions containing a continuing obligation are met.

(a) Payment of an annual fee determined by square footage or lineal footage of public right-of-way or public property occupied by or traversed by the facility. The amount of the fee shall be determined by the Lowell City Council as a part of the permit approval process and shall approximate fair market value for the rent or lease of similar property as determined by the City Council. The fee shall be due and payable initially upon receipt of the right-of-way license and then annually on the anniversary of the issuance of the license. The City may adjust the fee to

account for changes to fair market value prior to an annual payment if notice is made to the license holder at least 60 days before the payment is due.

(b) The City may waive all or a portion of the required fee in the event that the City and the person owning the facility enter into an agreement concerning in-kind services to be provided by the person owning the facility. Such in-kind services may be of whatever form or type deemed by the City to be at least of equivalent value to the required license fee. Installation of any additional facility or provision of any service, whether for free or for a charge, in conformity with a written contract with the City concerning in-kind services shall not require an additional right-of-way license and shall not be considered to be services requiring a franchise from the City.

(c) A right-of-way license grant by the City shall cover and allow for only the uses and location described in the application for the license. Any additional installation or location of facilities, or modification of use, shall require an additional application for right-of-way license, and shall not be allowed until approval of the application.

(d) The person holding a right-of-way license shall be responsible for all costs of installation of any facilities associated with the right-of-way license, and shall be responsible for the repair of any portion of the right-of-way or property in the right-of-way disturbed or damaged by the installation of the facility. Repairs must return the right-of-way and all other property to a condition equivalent of the condition of the right-of-way or property before the initiation of installation of the facility. The City may require the posting of a bond or the provision of other securities in an amount to be determined by the City to guarantee the payment of costs in the event that the right-of-way or other property is not restored to the satisfaction of the City.

(e) Maintenance, repair or removal of the facility or any portion of the facility may be initiated only upon prior written approval of the City. All work done for the purposes of maintenance, repair or removal of the facility shall be subject to the same terms and conditions as apply to installation work.

(f) The City may require the owner of the facility to move, at the owner's expense, any portion of the facility when such movement is necessary for the completion of any work initiated or under the authority of the City. The City shall not be responsible for any cost associated with damage or loss of business resulting from the required movement of the facility. Except in the event of an emergency, the City will provide ample prior notice to the owner of the facility concerning any needed relocation of the facility.

(g) The owner of the facility retains all responsibility to notify other persons or entities of the location of the facilities in the right-of-way, and to respond to inquiries concerning the location of the facilities. The City shall have no responsibility to provide such information, nor responsibly for any damage that might result from providing or failing to provide such information. The owner of any facility installed pursuant to a right-of-way license shall agree to indemnify and hold harmless the City of Lowell from any and all claims concerning damages arising from the installation, maintenance, repair, relocation, operation of the facility and all other obligations created by these code requirements.

(h) A right-of-way license does not allow the use of any private property within or outside the right-of-way.

(i) A right-of-way license shall be non-transferable.

(j) A right-of-way license may be terminated by the City 30 days after written notice of the termination is mailed to the last known address of the person to whom the license was granted. The City may terminate a right-of-way license for failure to abide by any of the terms and conditions of the license, for failure to abide by any contract entered into for in-kind services, or upon discovery by the City that the conditions under which the license was granted no longer

apply. The owner of the facilities must remove the facilities within 60 days of the notice of termination being mailed. Removal shall be at the owner's expense. Any facility or portion of a facility not removed with the time allowed may be removed by the City at the owner's expense, or may become the property of the City. Such a choice will be based upon the sole discretion of the City.

2.413 Long Term Residential Right-of-Way Use Permit Application Requirements.

(a) Long term right-of-way permits are required for all private uses within the public right-of-way adjoining residential properties. Application for a long term residential right-of-way use permit shall be required for any structure, fence, personal property storage, or similar private use of the right-of-way not specifically exempted by Sections 2.404 and 2.405 or other Sections of the Lowell Revised Code. Application for a long term residential right-of-way use permit shall be made in writing and contain the following information:

- (1) Name, address and phone number of the applicant.
- (2) A specific description of the proposed use, including all drawings necessary to identify the exact location of the use within the right-of-way.
- (3) The reason for the proposed use, including an explanation of why use of the right-of-way is necessary.
- (4) The duration of the proposed use

(b) The following restrictions apply to issuance of a long term right-of-way permit:

(1) The use must be limited to normal residential type uses. Long term uses related to home occupations and other approved use of residential properties for business related purposes require a right-of-way use license in accordance with **Sections 2.408 through 2.412**.

(2) No permit will be considered for a right-of-way use specifically prohibited elsewhere in the Lowell Revised Code.

(3) The City Council must find that a grant of a long term right-of-way permit would not be detrimental to the public health, welfare, motorist or pedestrian safety or to neighboring residents of the applicant.

(4) The City Council may require whatever conditions it feels necessary insure public safety and mitigate impacts of the proposed use.

(c) The decision to grant a long term right-of-way permit, or deny an application for a long term right-of-way permit, shall be a decision solely within the discretion of the Lowell City Council, who may consult with any person deemed appropriate in the course of making a decision on such application.

(d) An application fee, established by resolution, is required to be submitted with an application for a long term right-of-way use permit.

2.414 Short Term Right-of-Way Use Permit Application Requirements.

(a) Permits may be issued for short term use of the public right-of-way for any residential, commercial, institutional or industrial use for a period of 30 days or less. Short term permits may be approved by the City Administrator. Applications for short term use permits shall contain the same information required in **Section 2.413(a)** for long term permits.

(b) The following restrictions apply to short term right-of-way use permits:

(1) No permit will be considered for a right-of-way use specifically prohibited elsewhere in the Lowell Revised Code.

(2) The City Administrator must find that a grant of a short term right-of-way permit would not be detrimental to the public health, welfare, motorist or pedestrian safety or to neighboring properties.

(3) The City Administrator may require whatever conditions deemed necessary insure public safety and mitigate impacts of the proposed use.

(c) A decision to deny a short term right-of-way use application by the City Administrator may be appealed to the City Council, if appealed within 10 days of a notice of denial.

(d) An application fee, established by resolution, is required to be submitted with an application for a short term right-of-way use permit.

(e) A short term right-of-way use permit is for a specific time period, not to exceed 30 days. Additional periods of time for the same or a different use require a separate permit.

2.415 Right-of-Way Excavation Permit Requirements. This Section applies only to City owned rights-of-way. Rights-of-way which are owned by Lane County require a permit issued by Lane County Public Works.

(a) Any excavation within a public right right-of-way, whether for private or public purposes, requires an excavation permit issued by the City of Lowell, with the following exceptions:

(1) The holder of a franchise for use of public rights-of-way, where the franchise agreement includes standards and requirements for excavation within the public right-of-way.

(2) The holder of a license for use of public rights-of-way, where the license agreement includes standards and requirements for excavation within the public right-of-way.

(3) Excavation and construction within a newly platted public right-of-way, where such work is being completed pursuant to a development agreement between the developer and the City.

(4) Excavation and construction by City Public Works personnel or by a licensed and bonded contractor under contract to the City of Lowell to construct public improvements within the right-of-way.

(b) All excavation within and restoration of public rights-of-way must comply the most current edition of the City of Lowell Public Works Construction Standards manual and/or any additional requirements of the City of Lowell Public Works Department or City Engineer.

(c) Applications for a Right-of-way Excavation Permit shall include:

(1) Name, address and phone number of the applicant.

(2) Name, address and phone number of the contractor, if different.

(3) A specific description of the location of the proposed excavation within the right-of-way.

(4) The scheduled dates for the excavation and construction.

(5) A specific description and/or plans for the excavation and construction to be completed.

(6) A traffic control plan, if normal pedestrian or vehicle traffic flows are impacted by construction.

(7) A specific description and/or plans for restoration of paved and unpaved right-of-way areas.

(8) Evidence of liability insurance in an amount not less than \$500,000. For projects that will encroach upon or otherwise impact vehicle and pedestrian travel areas, the City also requires a Certificate of Insurance naming the City of Lowell as additional insured.

(d) Application may be made for multiple right-of-way locations under a single permit only if all construction work is to be completed simultaneously by a single contractor.

(e) An application fee, established by Resolution, is required to be submitted with any application for a right-of-way excavation permit.

2.416 Driveway Permit Requirements. This Section applies only to City owned rights-of-way. Rights-of-way which are owned by Lane County require a permit issued by Lane County Public Works.

(a) A permit is required for construction of any driveway access to a public right-of-way.

(1) For a new driveway to previously undeveloped properties, the driveway permit will be issued in conjunction with a building permit for a new structure and construction will be inspected as a part of the building inspection process. No additional fee will be charged.

(2) For relocation of an existing driveway or a new or additional driveway to currently developed property, a separate driveway permit is required. A fee, established by Resolution, is required to be submitted with the application.

(b) Multiple Driveways. For residential uses, multiple driveway accesses to the same property will not normally be permitted. In order for multiple accesses to be approved, the applicant must clearly demonstrate, to the satisfaction of the City, that a second driveway is required for the effective use of the property and that no alternative to a second driveway is possible. For commercial and industrial development, multiple driveways must be approved as a part of the site plan review process required by **Section 9.250**.

(c) Application for a driveway permit or building permit must contain the following:

(1) Name, address and phone number of the applicant.

(2) Name, address and phone number of the contractor, if different.

(3) A site plan showing the specific location of the proposed driveway access and any other existing driveways that are currently in use.

(d) All driveway construction and restoration of public rights-of-way following construction, removal and/or relocation of driveways must comply the most current edition of the City of Lowell Public Works Construction Standards manual and/or any additional requirements of the City of Lowell Public Works Department or City Engineer. Driveways and driveway connections to a public street must be paved in accordance with **Section 9.513 (a)**.

2.417 Enforcement and Penalties. The City may enforce this section by citation or abatement or both.

(a) The City Administrator, Public Works Director, or any Police Officer, sworn by the City of Lowell, shall have citation authority for purposes of enforcing Sections 2.400 through 2.416.

(b) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this code, or any requirements or conditions of a right-of-way permit or license. Violation of any provision or failing to comply with any requirement of this code or a license or permit issued under this code is a Class B violation and may be cited into Lowell Municipal Court as such. Each day a violation continues is considered a separate violation

(c) In addition to issuance of a citation, the City may take action to correct or abate a violation upon a determination by the City Administrator that the violation creates an immediate safety hazard to pedestrian and/or vehicle traffic or constitutes a nuisance. The person responsible for the violation shall be required to reimburse the City for all costs to correct or abate the violation, including all administrative and legal costs to enforce compliance.

2.418-2.899 Reserved for Expansion.

BLACKBERRY JAM FESTIVAL

2.900 Blackberry Jam Festival Policy and Procedures. Lowell Revised code Sections 2.900 through 2.904 are adopted by Ordinance 253 unless specified otherwise.

2.901 Organization and Responsibilities Established.

(a) Blackberry Jam (BBJ) Festival Concept. The Lowell BBJ Festival is intended to be a community event for the City of Lowell, the adjoining unincorporated communities of Dexter, Trent, Fall Creek and Unity, and rural areas of Lane County surrounding Lowell. BBJ Festival goals are as follows:

(1) Provide an exposure to Lowell's many recreational opportunities and community spirit.

(2) Provide a marketplace for local crafters and food vendors.

(3) Provide a venue for local non-profit fundraising activities.

(4) Increase level of tourism in the Lowell Community and Lane County.

(b) Ownership. The BBJ Festival is wholly owned and operated by the City of Lowell under the guidelines established in LRC Sections 2.901 through 2.904.

(c) BBJ Festival Committee Established. A BBJ Festival Executive Committee is hereby established as a standing committee of the City of Lowell. The Executive Committee shall consist of five persons appointed by the City Council. Appointees to the Executive Committee may reside anywhere within the community as described in (a) above and will serve for an indefinite period of time, until resignation or removal by the City Council or a majority vote of the Executive Committee. The Executive Committee shall appoint the positions of Chairperson, Vice-Chairperson, Recording Secretary and Treasurer. As a standing committee of the City, all meetings of the Committee must follow State Public Meeting Law requirements. The Executive Committee may appoint such others to an expanded BBJ Festival Committee as are needed to organize and operate the BBJ Festival. The Committee shall establish a regularly scheduled meeting date and time and its own rules of procedure. A quorum of the Executive Committee members is required for any decision of the Committee.

(d) Chairperson Responsibilities. The Chairperson is responsible for overall management and operations of the Festival, shall chair Committee meetings, and perform such other duties as established by Committee rules.

(e) Recording Secretary Responsibilities. The Recording Secretary is responsible for publishing and posting a meeting agenda, taking and publishing minutes of all meetings and such other duties as established by Committee rules. The Recording Secretary shall maintain a file of meeting minutes and provide one copy of all meeting minutes to the City Administrator for a City file.

(f) Treasurer Responsibilities. The Treasurer is responsible for maintaining all Festival financial records and for collecting revenue and paying expenses under rules established in Section 2.902. The Treasurer shall perform such other duties as established by Committee rules.

(g) City Administrator Responsibilities. The City Administrator is responsible for oversight of Committee activities and for insuring Committee compliance with State law and policies and procedures established in **Sections 2.901 through 2.904**. The City Administrator may overturn an action of the Committee by written Administrative Decision. Such Administrative Decisions may be appealed to the City Council within 15 days of the date of the decision by written appeal signed by an Executive Committee Officer. The City Administrator shall serve as an ex officio member of the BBJ Executive Committee.

2.902 Financial Management Policy and Responsibilities Established.

(a) General Policy. As an activity of a municipal corporation of the State of Oregon, all funds received and expended for the BBJ Festival are considered public funds and must be managed in accordance with established State law and the policy and procedures established in this section.

(b) Annual Budget Requirements. The City shall establish a separate Fund within the City's annual budget to appropriate funds for BBJ Festival operations. Each year, before the last Friday in March, the Chairperson shall submit a proposed BBJ Festival Fund budget for the next fiscal year to the City Administrator for inclusion in the City proposed budget. The Chairperson is responsible for managing the Festival within the budget approved and adopted by the City, unless a supplemental budget is approved in accordance with State budget law.

(c) Accounting and Cash Control. The Committee Treasurer is responsible for receiving and disbursing all BBJ Festival funds, for all accounting and cash control, and for complying with the procedures established below.

(1) The BBJ Festival Fund shall be established on a cash accounting basis consistent with the City's accounting basis.

(2) All revenue received by the Committee shall be deposited into and expended from a separate City of Lowell BBJ Festival checking account. Three Executive Committee members and the City Administrator may be signatories on the account. The Treasurer shall not be a signatory. Two signatures shall be required on all checks.

(3) All expenditures of BBJ Festival funds shall be within annual budget authorizations and approved as provided for by the rules of the Committee. All single expenditures exceeding \$2,500 shall also be separately approved by the City Administrator.

(4) The Committee may establish a petty cash fund in an amount not to exceed \$200. Receipts shall be provided for all payments from the petty cash fund. The petty cash fund shall be replenished only by a check written from the BBJ Festival account. Checks written to replenish the petty cash fund shall be reported on the monthly expense report required by subparagraph (5) below and copies of all receipts submitted with that expense report.

(5) The Treasurer shall provide to the City Finance Clerk a monthly report of all BBJ Festival Fund revenue received and disbursements made not later than the 5th day of the month for the previous month. The revenue report shall consist of a listing of all revenue received, by source, amount, and payment method and have copies of all deposit receipts attached. The expense report shall consist of a listing of all payments made, by vendor, amount and check number and shall have copies of all paid invoices attached.

(6) The Treasurer shall reconcile the checking account statement within 5 days of receipt and provide a copy of the reconciled statement to the City's Finance Clerk.

(7) Originals of all financial documents shall be maintained on file by the Treasurer throughout the fiscal year. These files, for the previous fiscal year shall be delivered to the City for review by the City's auditor and to be archived not later than August 30th of each year.

2.903 Security and Public Safety.

(a) The Executive Committee will appoint a Public Safety and Security Coordinator. Prior to the festival being opened to the public and periodically during the Festival, the Safety and Security Coordinator will ensure that the Festival grounds have been inspected to identify significant potential hazards to the public. Such safety hazards must be corrected by the responsible party. Any hazard created by the operations of a vendor or concessionaire must be immediately corrected or the operation may be shut down. Failure to eliminate a hazard that is identified by the Safety and Security Coordinator or other public safety official will result in the vendor or concessionaire being removed from the Festival.

(b) During the duration of the Festival, in addition to all illegal activities as established by State Statute or Lowell Code, the following are prohibited in Rolling Rock Park or on other public or private property being used as a part of the festival event and/or under the control of the BBJ Festival Committee:

- (1) Possession and/or consumption of alcohol.
 - (2) Dogs, excluding seeing eye and service dogs, and other domestic pets, regardless of level of owner control, unless approved in advance by the Committee for Festival participation.
 - (3) Use of bicycles, skateboards, motorized or unmotorized scooters and roller skates or roller blades, unless approved in advance by the Committee for Festival Participation.
- (c) Penalty. Violations of Section 2.903 (b) are Class D violations and offenders may be cited by the Safety and Security Coordinator, City Administrator or any law enforcement officer.

2.904 Other Policy and Procedures.

(a) Contracting. City of Lowell contracting requirements contained in **LRC Sections 2.100 through 2.166** apply to all activities of the BBJ Festival Committee with the exception of the following:

(1) The City Council delegates the authority of Solicitation Agent to the Chairperson for contracts and concession agreements valued at \$5,000 or less.

(2) The City Council delegates the authority of the Contract Review Board to the BBJ Committee for all contracts and concessions valued at \$25,000 or less.

(b) Volunteers. All BBJ Festival Committee members and others assisting with the set-up, operation and tear down of the Festival event under the direct supervision of the Committee are considered City volunteers. As such, in order to provide Workers Compensation Insurance coverage, the Chairperson must provide an estimate of volunteer hours for the next fiscal year with the annual budget submission and maintain a record of the names of all such volunteers and the hours worked throughout the fiscal year to be made available to be reported with the annual Workers Compensation Insurance audit. No person participating in any fashion except as described in subparagraph (c) below is to be considered an employee of the City and under no circumstances are any such persons to be paid from BBJ Festival funds except for reimbursement of justified Festival expenses supported by receipts.

(c) City Staff Participation. Under no circumstance shall paid City Employees be directed by members of the Committee to assist with the event without the express approval of the City Administrator. Nothing in this requirement precludes City Staff from serving as volunteers outside their normally scheduled work hours solely as a personal choice.

(d) Insurance. The City shall provide liability insurance for all BBJ Festival events organized and under the control of the Committee under its blanket liability policy. The only exception to this is for the event parade which shall be organized by the Committee but be under the control of the Lowell Fire District. To minimize liability risk to the City, the following shall be required:

(1) All festival events that require a contract, application or registration including, but not limited to entertainment contracts, concessionaire contracts, vendor applications and event registration forms shall contain "hold harmless" language approved by the City Attorney and be signed by the applicant or, in the case of a minor, the parent or guardian of an applicant.

(2) All concessionaires and vendors selling food or operating activity equipment/animals shall provide proof of liability insurance in an amount not less than \$500,000 naming the City of Lowell as additional insured on the policy. Groups associated with the Lowell School District may be covered under the blanket policy of the School District upon written approval of such coverage by the School District. It is the responsibility of the Chairperson to insure compliance with insurance requirements and provide proof of such coverage, if requested by the City or its insurer. Only the City Administrator is authorized to waive the above insurance requirements.

(e) Festival Mailing Address. The BBJ Festival Committee shall maintain a separate Post Office Box at the Lowell Post Office and direct all correspondence with the Festival Committee to that address.

(f) Additional Policy and Procedures. The City Administrator via written Administrative Decision and/or the City Council by motion of the Council, may establish additional policy and procedures above and beyond those established in this Code, either for a specific purpose or permanently, when deemed necessary to comply with established law or to protect the City. Permanent policy established in such a manner must be incorporated into the code within one year of being established.

End of Title Two

**TITLE THREE
PUBLIC IMPROVEMENTS**

3.000-3.199 Reserved for Expansion.

LOCAL IMPROVEMENT DISTRICTS

3.020 Local Improvement Districts. Sections 3.021 through 3.038 are adopted by Ordinance 161 unless specified otherwise.

3.021 Initiation of Proceedings and Report. Whenever the council shall deem it necessary, upon its own motion or upon the petition of the owners of property that would bear more than two-thirds of the estimated assessments for a proposed improvement, to make any street, sewer, sidewalk, drain, or other public improvement to be paid for in whole or in part by special assessment according to benefits, then the council shall, by motion, direct an appropriate city employee or agent to make a survey and written report for such project and file the same with the city recorder. Unless the council shall direct otherwise, such report shall contain the following matters:

- (a) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof.
- (b) Plans, specifications, and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the report may adopt the plans, specifications, and estimates of such agency.
- (c) An estimate of the probable cost of the improvement, including any legal, administrative, and engineering costs attributable thereto.
- (d) An estimate of the unit cost of the improvement to the specially benefited properties.
- (e) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited.
- (f) The description 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.
- (g) A statement of outstanding assessments against property to be assessed.

3.022 Council's Action on Report. After the report shall have been filed with the city recorder, the council may thereafter by motion approve the report, modify the report, and approve it as modified; require additional or different information for such improvement; or it may abandon the improvement.

3.023 Resolution and Notice of Hearing. After the council shall have approved the report as submitted or modified, the council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement, and shall direct the recorder to give notice of such improvement by two publications one week apart in a newspaper of general circulation within the City of Lowell and by mailing copies of such notice by registered or certified mail to the owners to be assessed for the costs of such improvement, which said notice shall contain the following matter subject to public examination.

- (a) That a written report on the improvement is on file in the office of the recorder and is
- (b) That the council will hold a public hearing on the proposed improvement on a specified date,

which shall not be earlier than 10 days following the first publication notice, at which objections and remonstrances to such improvement will be heard by the council; and that if, prior to such hearing, there shall be presented to the recorder valid, written remonstrances on forms provided by the city of the owners of property that would bear more than two-thirds of the amount estimated to be assessed to finance the improvement, then the improvement will be abandoned for at least six months.

(c) A description of the property to be specially benefited by the improvement, the owners of such property, and the estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties.

3.024 Manner of Doing Work. The council may provide in the improvement resolution that the construction work may be done in whole or in part by the City of Lowell, by a contract, or by any other governmental agency, or by any combination thereof.

3.025 Hearing. At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of said hearing of written remonstrances and oral objections, if any, the council may, by motion, at the time of said hearing or within 60 days thereafter, order said improvement to be carried out in accordance with the resolution; or the council may, on its own motion, abandon the improvement.

3.026 Call for Bids.

(a) The council may, in its discretion, direct the city recorder to advertise for bids for construction of all, or any part of, the improvement project on the basis of the council-approved report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after said public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the council shall determine the time and manner of advertisement for bids, and the contracts may be let to the lowest responsible bidder whose bid is in the best interests of the city as determined in the sole discretion of the council, provided that the council shall have the right to reject any and or all bids when they are deemed unreasonable or unsatisfactory in the council's discretion. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the City of Lowell.

(b) If the council finds, upon opening bids for the work of such improvement, that the bid in the best interest of the city is substantially in excess of the estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of such bid; and it may direct the city recorder to publish one notice thereof in a newspaper of general circulation in the City of Lowell.

3.027 Assessment Ordinance. If the council determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award or city departmental cost, or after the work is done and the cost thereof has been actually determined, the council shall determine whether the property benefited shall bear all or a portion of the cost. The recorder or other person designated by the council shall prepare the proposed assessment to

the respective lots within the assessment district and file it in the appropriate city office. Notice of such proposed assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment proposed on that property and shall fix a date by which time objections shall be filed with the recorder. Any such objection shall state the grounds thereof. The council shall consider such objections and may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments

3.028 Method of Assessment and Alternative Methods of Financing.

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

(1) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived.

(2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.

(3) Authorize payment by the city of all, or any part of, the cost of any such improvement when, in the opinion of the council, the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement.

(b) Nothing contained in this ordinance shall preclude the council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvements.

3.029 Remedies. Subject to the curative provisions of Section 3.036 and the rights of the city to reassess as provided in Section 3.037 of this ordinance, proceedings for writs of review and suits in equity may be filed no later than 60 days after the passage by the council of the ordinance spreading the assessment; providing that the property owner shall have filed a written objection to the proposed assessment as provided in Section 3.027 herein. A property owner who has filed a written objection with the city recorder, as required by Section 3.027 herein, shall have the right to apply for a writ of review based on the grounds that the council, in the exercise of judicial functions, has exercised such functions erroneously or arbitrarily, or has exceeded its jurisdiction, to the injury of some substantial right of such owner, if the facts supporting said ground have been specifically set forth in the written objection as required in Section 3.027 herein. A property owner who has filed a written objection with the city recorder as required by Section 3.027 herein, may commence a suit for equitable relief based on a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the city recorder within 30 days after receiving notice or knowledge of the improvement. No provision of this section shall be construed so as to lengthen any period of redemption, or so as to affect the running of any statute of limitation or equitable defense, including laches. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the city council to remedy or cure the alleged errors or defects.

3.030 Notice of Assessment. Within 10 days after the ordinance levying assessment has been passed, the city recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property, and shall publish notice of such assessment twice in a newspaper of general circulation in the City of Lowell, the first publication of which shall be made not later than 10 days after the date of the assessment ordinance. The notice of assessment shall recite the date of the assessment ordinance and shall state that, upon the failure of the owner of the property assessed to make application to pay the assessment in installments within 10 days from the date of first publication of notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure; and said notice shall further set forth a description of the property assessed, the name of the owner of the property, and the amount of each assessment.

3.031 Lien Records and Foreclosure Proceedings. After passage of the assessment ordinance by the council, the city recorder shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof together with a description of the improvement, the name of the owners, and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof which have been assessed for such improvement. All assessment liens of the City of Lowell shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at the rate of 7 percent per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the State of Oregon; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state of Oregon to redeem such property.

3.032 Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the city recorder, who shall determine whether there has been an error in fact. If the recorder shall find that there has been an error in fact, he/she shall recommend to the council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the city recorder shall make the necessary correction in the docket of city liens and send a correct notice of assessment by registered or certified mail.

3.033 Deficit Assessment. In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare such deficit and prepare a proposed deficit assessment. The council shall set a time for a hearing of objections to such deficit assessment and shall direct the city recorder to publish one notice thereof in a newspaper of general circulation in the City of Lowell. After such hearing, the council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this ordinance; and notices of the deficit assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with Sections 10 and 11 of this ordinance.

3.034 Rebates. If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of any improvements, then the council must ascertain and declare the same by ordinance; and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

3.035 Abandonment of Proceedings. The council shall have full power and authority to abandon and rescind proceedings for improvements made under this ordinance at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, his assigns or legal representatives.

3.036 Curative Provisions. No improvement assessment shall be rendered invalid by reason of a failure of the report to contain all of the information required by Section 1 of this ordinance; or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published and mailed; nor by the failure to list the name of, or mail notice to, the owner of any property as required by this ordinance; or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

3.037 Reassessment. Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been, or shall be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the council shall be in doubt as to the validity of such assessment, deficit assessment, or reassessment, or any part thereof, then the council may make a reassessment in the manner provided by the laws of the state of Oregon.

3.038 Severability. The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this ordinance.

3.039-3.059 Reserved for Expansion.

REIMBURSEMENT DISTRICTS

3.060 Reimbursement Districts. Sections 3.060 through 3.074 are adopted by Ordinance 259 unless otherwise specified.

3.061 Definitions.

Applicant: A person who is required to pay for or install (or chooses to finance) some or all of a public improvement which is available to serve real property (other than real property owned by the person) and who applies to the City for reimbursement for the expense of the improvement. An applicant can be the City.

City: The City of Lowell.

City Administrator: The City Administrator for the City of Lowell or another person, employee or agent designated by the City Administrator to perform the duties of the City Administrator pursuant to Sections 3.060 through 3.074.

Front Footage: The linear footage of a lot or parcel owned by a property owner to be served by a public improvement.

Person: A natural person, a partnership, corporation, association or any other legal entity, capable of owning, holding and/or disposing of real or personal property.

Public Improvement: The construction, reconstruction and/or upgrading of public water, sewer, stormwater and transportation facilities conforming with the City of Lowell's adopted standards and specifications, and any applicable land use conditions of approval.

Qualified Public Improvement: A public improvement for which Systems Development Charges are not collected that is required to be constructed as a condition of approval of a land development and benefits undeveloped properties of others in one of the following ways:

- Extends a public improvement along the front footage of undeveloped properties owned by others who will directly benefit from having the public improvement constructed.
- Benefits undeveloped properties that share, with the applicant, the same frontage footage of the right-of-way or public easement where the public improvement is constructed.
- Provides additional capacity, in excess of minimum size or capacity standards, for future service to undeveloped properties beyond the property on which the public improvement requirement was placed, but only when the area to be served by the additional capacity is within the Lowell UGB and is clearly identified and justified by the applicant for the reimbursement district to the satisfaction of the City.

Reimbursement Agreement: The agreement between an applicant and the City providing for the construction, reconstruction and upgrading of and payment for public improvements to be financed through a reimbursement district.

Reimbursement District: The area determined by the Lowell City Council to derive benefits from the construction of street, water and/or sanitary/stormwater sewer improvements, financed in whole or in part by an applicant, including property having the potential to utilize the affected improvement(s).

Reimbursement Fee: That sum determined by a resolution of the Lowell City Council and the reimbursement agreement to be the amount of money proportionate to the benefit derived by the affected property from the public improvement.

Utilize: To receive the benefit of a public improvement, manifested by either the receipt of a permit which will allow the use of an affected public improvement or a requirement that the property utilize the public improvement, or increase in the use of the public improvement.

3.062 Application for a Reimbursement District.

(a) Any person who constructs qualified public improvement(s) capable of providing service(s) to property may by written application filed with the City; request that the City establish a reimbursement district. The application shall be accompanied by a fee sufficient to cover the cost of administrative review and the notice required by this Section.

(b) The application for creation of a reimbursement district shall include the following:

(1) A description of the location, type, size and cost of the public improvement sought to be eligible;

(2) A map showing the properties to be included within the proposed reimbursement district which includes information on the ownership of each property; the zoning thereof; the front and/or square footage of the property; and any other data (traffic studies, water modeling,

etc.) necessary for or relevant to calculating the apportionment of the cost of the affected public improvement(s);

(3) Information on the cost of the public improvement(s). In the event the affected public improvement(s) have been built or installed, this information must reflect the actual cost of the improvements as evidenced by receipts, invoices or other similar documents. In the event the public improvements have not been constructed or installed, the information must reflect the estimated cost of the improvements as evidenced by bids, projections as to the cost of labor and materials and other similar information requested by the City; and

(4) The date the City either accepted the public improvements or estimated date of completion.

An application may be submitted to the City prior to the construction or installation of the attached public improvement but in any event must be submitted not later than 120 days after completion and acceptance by the City of the public improvements. However, the City Administrator may waive this time limitation upon a showing by the applicant of good cause for the delay.

3.063 Staff Report. The City Administrator shall review the application and evaluate whether a Reimbursement District should be established. The City Administrator may require the submittal of other relevant information from the applicant in order to assist in the evaluation. The City Administrator shall after evaluation, prepare a written report for the City Council, considering and making a recommendation as to the efficacy of establishing a reimbursement district. The report shall include information on the following items:

- (a) Whether the applicant will finance or has constructed some or all of the public improvement(s) and whether those improvements are available to serve property other than property owned by the applicant;
- (b) The area to be included within the reimbursement district;
- (c) The actual or estimated cost of the public improvement(s);
- (d) A methodology for spreading the cost associated with the qualified public improvement(s) between and among the affected parcels. The methodology should take into consideration the cost of the improvement(s), the value of the unused capacity, any agreements on cost spreading methodology reached by a majority of the property owners within the proposed district, and such other factors as may be deemed relevant by the City Engineer;
- (e) The amount, if any, to be charged by the City for its administration of the agreement;
- (f) The period of time that the right to reimbursement exists; and
- (g) Whether the public improvement(s) will or have met City standards.

3.064 Amount to be Reimbursed. The cost to be reimbursed to the applicant is limited to the cost of construction, including property acquisition costs, the cost of construction permits, engineering and legal expenses related directly to the formation of the reimbursement district, as determined by the City Council in its sole discretion.

3.065 Public Hearing.

(a) Within a reasonable time after the City Administrator has completed the staff report described in Section 3.063, the City Council shall hold a public hearing at which any person who is or may be monetarily affected by the formation of the reimbursement district is given the opportunity to comment on the formation of the proposed reimbursement district. The formation of the reimbursement district is not subject to termination because of remonstrances, and the City

Council has the sole authority and discretion to decide whether a reimbursement district shall be formed.

(b) If a reimbursement district is formed prior to the actual construction of and/or acceptance by the City of the improvement(s), the City Council may set a not-to-exceed reimbursable amount which may or may not reflect the applicant's actual costs. A second public hearing shall be held after the improvement(s) have been accepted by the City. At that time, the City Council may modify the resolution described in **Section 3.067** to reflect the actual cost of the improvement(s)

3.066 Notice of Public Hearing. Not less than ten (10) nor more than thirty (30) days prior to any public hearing held pursuant to this Section, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than thirteen (13) days prior to the hearing, which notice is deemed effective on the date the notice is mailed. Failure of the applicant or any affected property owner to receive notice shall not invalidate or otherwise affect the authority of the City Council to act.

3.067 City Council Action.

(a) After the public hearing held pursuant to Section 3.065, the City Council shall approve, reject, modify or remand for further study the recommendations contained in the Staff Report. The Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the Staff Report as approved or modified, and shall specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving City permits applicable to development of that parcel as provided for in **Section 3.071**.

(b) When the applicant is other than the City, the resolution shall authorize the City Administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The requirements below may be incorporated into a Public Improvements Agreement required by **Section 9.804**. The agreement, at a minimum, shall contain the following provisions:

- (1) That the public improvement(s) shall meet all applicable City standards;
- (2) The amount of potential reimbursement to the applicant;
- (3) That the total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);
- (4) That the applicant shall guarantee the public improvement(s) for a minimum period of twelve (12) months after the date of written acceptance by the City;
- (5) That the City will make reasonable efforts to properly account for and collect the reimbursement fee from any affected property, including the City's costs or expenses related to collection of the reimbursement fee, but is not liable for any failure to collect such fee or costs.
- (6) If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the City.

(c) If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

3.068 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, by notice mailed to them. 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 thereof.

3.069 Recording the Resolution. The City Administrator 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. Said recording shall not create a lien. Failure to make such recording shall not affect either the lawfulness of the resolution nor the obligation to pay the reimbursement fee.

3.070 Contesting the Reimbursement District. Any legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed within sixty (60) days following the adoption of a resolution establishing a reimbursement district, and shall be by Writ of Review as provided in ORS 34.010 to ORS 34.100.

3.071 Obligation to Pay Reimbursement Fee.

(a) The applicant for a permit related to property within any reimbursement district shall pay to the City, in addition to any other applicable fees and charges, the reimbursement fee established by the City Council if within the time specified in the resolution, the person applies for and receives approval for any of the following activities:

(1) A building permit which will cause either the use of a public improvement or an increase in the use thereof;

(2) The connection to a public improvement which results in the use of a public improvement, or an increase in the use thereof.

(3) Any City approval or development activity which results in utilization of a public improvement as defined in Section 3.061.

(b) The City determination of who shall pay the reimbursement fee is final. Neither the City nor any officer or employee shall incur liability of any nature whatsoever as a result of this determination.

(c) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvement(s), regardless of whether access is taken or provided directly onto such street. Nothing in this Section 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 such payment was for other improvement(s). No permit shall be issued for any of the activities listed in Subsection 3.071(a) unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. In the case of multiple improvements, a reimbursement fee may be collected for selected improvements which the new development actually utilizes.

(e) The date when the right of reimbursement ends shall be as follows;

(1) For sanitary sewer, stormwater sewer and water improvements, twenty years from the district formation date. No extension will be authorized

(2) For street improvements, twenty years from the district formation date. The reimbursement fee shall be calculated over the twenty year reimbursement period based on the City's determination of the useful life of the street improvement and shall decline two and one half percent (2.5%) per year to a value not exceeding 50% of the original fee in the twentieth and final year of the reimbursement agreement. The reimbursement fee shall be calculated to decline beginning at six months and two and one half percent (2.5%) every year thereafter. No extensions may be applied for or authorized in the case of street improvements.

(f) Any property owner may prepay the established reimbursement fee prior to applying for a building permit or connecting to the affected public improvement.

3.072 Public Improvements. Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the City, or other appropriate public entity as directed by the City.

3.073 Multiple Public Improvements. During the initial formation of a reimbursement district, more than one public improvement may be considered for inclusion in the reimbursement district.

3.074 Collection and Payment; Other Fees and Charges.

(a) The City shall place all reimbursement payments received pursuant to a reimbursement district in the City's trust and agency account and shall make all payments to applicants from that account.

(b) Applicants shall receive all reimbursement collected by the City for their public improvements. Such reimbursement shall be delivered to the applicant for as long as the reimbursement district agreement is in effect. Such payments shall be made by the City within ninety (90) days of receipt of the reimbursements.

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

3.075-3.399 Reserved for Expansion.

SYSTEM DEVELOPMENT CHARGES

3.400 Systems Development Charges. Sections 3.400 through 3.412 are adopted by Ordinance 234 unless specified otherwise.

3.401 Purpose. The purpose of this ordinance is to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314 for the purpose of creating a source of funding for existing system capacity and/or the installation, construction and extension of future capital improvements. These charges shall be collected either at the time of increased usage or at the time of permitting development of properties which increase the use of capital improvements and generate a need for those facilities.

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

3.403 Definitions. For purposes of this ordinance, the following definitions shall apply:

Capital Improvements: Facilities or assets used for:

- Water supply, treatment and distribution;
- Sewage and wastewater collection, transmission, treatment and disposal;
- Drainage and flood control;
- Transportation; or
- Park and Recreation.

Development: Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access. Previously developed properties which have been vacant, vacated or otherwise have not utilized system capacity or provided system revenue for more than 10 years are defined as Development for the purpose of imposing SDCs. SDCs for such properties will be reduced in an amount not to exceed the present value of any SDC in effect at the time the property was first developed. For previously developed properties that have not utilized water and sewer service for 10 years or less, a Return to Service Fee established by Resolution will be charged in lieu of an SDC. (amended, Ord 257)

Improvement fee: A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to the provisions of this ordinance.

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

Owner: The Owner(s) of record title or the purchaser(s) under a recorded sales agreement and/or other persons having an interest of record in the described real property.

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

Permittee: The person to whom a Building Permit, Development Permit, or Right-of-Way Access Permit is issued.

Qualified public improvement: A capital improvement that is:

- (a) Required as a condition of development approval;
- (b) Identified in the System Development Charge Fund Project Plan; and
- (c) Not located on or continuous to a parcel of land that is the subject of the development approval.

Reimbursement fee: A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to the provisions of this ordinance.

System development charge: A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

3.404 System Development Charge Imposed; Method for Establishment Created.

(a) Unless exempted pursuant to Section 9 herein, a systems development charge is hereby imposed upon all development within the City of Lowell.

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

3.405 Methodology.

(a) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the City Council. The methodology shall promote the

objective that future systems users shall contribute not more than an equitable share of the cost of then-existing facilities.

(b) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the City Council.

(c) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution.

3.406 Authorized Expenditure.

(a) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by projected development.

(c) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Systems Development Charge Fund Project Plan adopted by the City.

(d) System development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

3.407 Project Plan.

(a) The City Council shall adopt by resolution the Systems Development Charge Fund Project Plan. This Plan:

- (1) Defines the amount of current or under construction capacity available for new development and the cost of the facilities comprising this capacity;
 - (2) Lists the capital improvements that may be funded with improvement fee revenues;
- and
- (3) Lists the estimated cost and estimated time of construction of each improvement.

(b) In adopting this plan, the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The City Council may modify this project plan at any time through the adoption of an appropriate resolution.

3.408 Collection of Charge.

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

- (1) A building permit;
- (2) A development permit for development not requiring the issuance of a building permit;
- (3) Approval to connect or increase the usage of the system or systems provided by the City; or
- (4) A right-of-way access permit.

(b) The resolution which sets the amount of the charge shall designate the permit or systems to which the charge applies.

- (c) If development is commenced or connection is made to the systems provided by the City without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- (d) The City Manager or his/her designee shall collect the applicable system development charge from the permittee or system user.
- (e) The City Manager or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless an exemption is granted pursuant to Section 8.
- (f) All moneys collected through the system development charge shall be retained in a separate fund and segregated by type of system development charge and by reimbursement vs improvement fees.

3.409 Exemptions.

- (a) Structures and uses established and existing on or before the effective date of the resolution.
- (b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the City's building code are exempt from all portions of the system development charge.
- (c) An alteration, addition replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.

3.410 Credits.

- (a) A permittee is eligible for credit against the system development charge for constructing a qualified capital improvement. A qualified capital improvement means one that meets all of the following criteria:
 - (1) Is required as a condition of development approval by the City Council; and
 - (2) Is identified in the adopted System Development Charge Fund Project Plan; and
 - (3) Is (i) not located within or contiguous to the property or parcel that is subject to development approval; or Is (ii) not located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
 - (4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project.
- (b) Applying the adopted methodology, the City may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at City expense under the then existing City Council policies.
- (c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.
- (d) All credit requests must be in writing and filed with the City before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the City of Lowell. The amount of any credit shall be determined by the City and based upon the subject improvement construction contract documents, or other

appropriate information, provided by the applicant for the credit. Upon a finding by the City that the contract amounts exceed prevailing market rate for a similar project, the credit shall be based upon market rates. The City shall provide the applicant with a credit on a form provided by the City. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

(e) Credits shall be apportioned against the property which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the City, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the City.

(f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.

(g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

(h) Credits shall be used by the applicant within ten years of their issuance by the City.

3.411 Notification/Appeals. The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 90 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 60 days prior to the public hearing. No challenge to the system development charge methodology shall be accepted after 60 days following final adoption by the City Council.

3.412 Annual Accounting. The City shall provide and make available on January 1 of each year an annual accounting for system development charges showing the total amount of system development charges collected for each system along with a list of projects funded in whole or in part through system development charges.

End of Title Three

**TITLE FOUR
UTILITIES**

4.000-4.009 Reserved for Expansion.

4.010 Water and Sewer Rate Structure. Sections 4.011 and 4.012 are adopted by Ordinance 232 unless indicated otherwise.

4.011 Water Service Rate Structure.

(a) The water rates charged for service will consist of a monthly fixed basic service charge per Equivalent Dwelling Unit (EDU) plus an incremental variable rate based on quantity used.

(b) An EDU is defined as follows:

(1) For single family and duplexes residential dwellings, each dwelling is a single EDU.

(2) For multi-family residential of 3 or more dwellings, each dwelling is 2/3rds of an EDU. Total EDUs for billing purposes is determined by multiplying the number of dwelling units by 0.67 and then rounding up to the next whole EDU. Exception: Multi-family dwelling units with 3 or more bedrooms will be considered as a full EDU.

(3) For Commercial, Industrial and Institutional meters ¾ inch or less, annual water use will be averaged and each 6,000 gallons, or portion thereof, will be considered one EDU. Annual averages will be reviewed each year in March, using the previous 12 month water use history to determine the number of EDUs for billing purposes for the next 12 months of service beginning on July 1st.

(4) For Commercial, Industrial and Institutional service with meters one inch or larger the following apply:

Meter Size	EDUs
1 inch	2.0
1 ½ inch	5.0
2 inch	8.0
3 inch	15.0
4 inch	25.0
6 inch	50.0

The City Council may approve calculating EDUs for meter sizes greater than ¾ inch by averaging annual water use, as described for ¾ inch meters in paragraph 3, for larger meters installed prior to adoption of this ordinance upon a written request from the service customer.

(c) The fixed basic service charge will be charged monthly to all water customers with open accounts regardless of the quantity of water used. Billing for partial month service will be prorated based on the number of days of service within the month.

(d) A variable water use rate will be established per 1,000 gallons of metered water use and will be billed to the nearest 10 gallons. Incremental variable rates may be established for different quantities of water use as long as such incremental rates are established in increments of 5,000 gallons of use or more per EDU. For example, if a different variable rate is established above 5,000 gallons of use per EDU, that rate will apply to over 10,000 gallons of use for a 2 EDU service.

(e) Fire Hydrant Fee. A monthly Fire Hydrant Fee will be charged to all developed properties not connected to the water system which have a fire hydrant located within 500 feet of any property line. A property is considered developed if the Market Value of improvements as determined by the Lane County Assessor is greater than \$25,000. Exception: The Fire Hydrant

Fee does not apply to multiple adjoining properties, under the same ownership, which are served by water service to any one of the properties.

(f) Use of Unmetered Water. Unmetered water may not be used without prior permission from the City. A special rate for unmetered water may be established. Charges for uses of unmetered water will be collected in advance of the use unless a billing arrangement is approved in advance by the City Administrator or designated representative. If unmetered water is used without prior permission, the charge for such use will be 10 times any fee established for permitted use.

(g) Special Water Use Rates. The City Council may approve special rates for water service customers upon a determination that rates established above should be modified based on the type of use and/or type of customer. Any such Special Rate will be clearly established in a written agreement between the City and the Customer.

(h) Temporary Discontinuance Rate. Customers may apply for the temporary discontinuance rate, in lieu of closing their account, if their service location is going to be vacant for over one month. The temporary discontinuance rate is equal to one half of the monthly fixed basic service charge for water service. If there is any water use recorded on the meter during the period that water service is temporarily discontinued, full service rates will automatically go into effect.

(i) The actual amount of rates and charges established above will be adopted by Resolution of the City Council. Rate resolutions will be reviewed annually for water system revenue needs and/or City Council policy and changed, if necessary, to be effective on July 1st.

4.012 Sewer Service Rate Structure.

(a) Rates for Sewer Service will be established as a fixed service charge, regardless of water use, per Equivalent Dwelling Unit as defined in Section 4.011, b, above.

(b) Temporary Discontinuance Rate. Customers may apply for the temporary discontinuance rate, in lieu of closing their account, if their service location is going to be vacant for over one month. The temporary discontinuance rate is equal to one half of the monthly fixed basic service charge for sewer service. If there is any water use recorded on the meter during the period that sewer service is temporarily discontinued, full service rates will automatically go into effect.

(c) The actual amount of the fixed service charge will be adopted by Resolution of the City Council and may be combined with the Water Rate Resolution. Rate resolutions will be reviewed annually for sewer system revenue needs and/or City Council policy and changed, if necessary, to be effective on July 1st.

4.013-4.019 Reserved for Expansion.

UTILITY SERVICE APPLICATION, BILLING AND COLLECTING

4.020 Utility Service Application, Billing and Collecting Process. Sections 4.021 through 4.039 are adopted by Ordinance 225 unless otherwise indicated.

4.021 Definitions. As used in this ordinance, unless the context requires otherwise, the following words and phrases mean:

Applicant: The person applying for water service or reapplying for water service at a new or existing location after service has been discontinued.

Business day: Monday through Friday, excluding holidays.

City: The City of Lowell, a municipal corporation in the state of Oregon.

City Administrator: The City of Lowell City Administrator or his/her designated agent.

Customer: A person, corporation, association or agency that is receiving any City utility service.

Delinquent: Utility charges not paid by the due date specified on the utility bill.

Premises: The property or area to which utility services are or will be provided.

Property owner: The person(s) shown in the Lane County assessor's records as owning the property receiving utility services.

Sewer service charge: The monthly fee, set by Resolution of the City Council, assessed to premises for use of the City sewer system. The fee is billed and collected with the monthly utility bill.

Utility bill: The monthly bill issued by the City that includes water service charges and/or sewer service charges, and a "total due" amount owed by the customer.

Utility charges: Any combination of water service charges and sewer service charges.

Water service charge: The monthly fee, set by Resolution of the City Council, that is assessed to customers receiving City water services. The fee is billed and collected with the monthly utility bill.

4.022 Equal Treatment.

(a) The City is committed to the principle of equal treatment of all utility customers. In furtherance of that commitment, this Ordinance shall apply equally to all persons, firms, corporations or legal entities receiving utility services supplied by the City and shall uniformly govern all billing, collection and payment of utility charges. It shall be the policy of the City that the utility needs of all customers shall be equally met without discrimination, with sound business principles, and that utility rates and the processes established by this Ordinance shall be uniformly applied to all customers that are similarly situated.

(b) The City does not discriminate against individuals on the basis of race, color, sex, sexual orientation, religion, disability, age, veteran status, ancestry, or national or ethnic origin in the administration of its ordinances, utility service or billing practices.

4.023 Utility Charges.

(a) The City shall charge all customers to whom the City is furnishing water a monthly water service charge based on the rate set by Resolution of the City Council.

(b) The City shall assess a monthly sewer service charge to all premises connected to the City's public sanitary sewer facility. The monthly charge shall be set by Resolution of the City Council.

4.024 Application for Water Service.

(a) An application for water service must be submitted when:

- (1) Service is requested for premises not previously served by the City water system; or,
- (2) Service is requested by an applicant to turn water on at a premises already served by the City water system.

(b) An applicant shall sign and submit a water service application form provided by the City. By signing the application form, the applicant(s) agrees upon receiving water service to abide by all City ordinances and resolutions concerning water service. The application is merely a request for service and does not bind the City to provide service.

(c) All applications for water service must include the following information, and any other such information as the City Administrator may reasonably request:

- (1) Date of application;
- (2) Location of premises to be served;
- (3) Date that applicant will be ready for service;
- (4) Whether the premises has ever been supplied by City water services;

- (5) The purposes for which the service is to be used;
- (6) The address to which bills are to be mailed or delivered;
- (7) Whether the applicant is an owner or tenant of the premises to be served; and
- (8) The applicant's social security number.

(d) All applications must be signed by the owner of the property served or to be served, or the property owner's designated agent.

(e) A property owner that requests the City to temporarily discontinue water service during a temporary vacancy of the premises (as provided by Section 13 of this Ordinance) is not required to submit an application when he/she requests that the City restore water service to the premises.

4.025 Deposits.

(a) At the time application for water service is made, the applicant shall pay a deposit in an amount set by Resolution of the City Council. At the time that the deposit is given to the City, the applicant shall be given a receipt for the deposit. Interest shall not be paid on deposits.

(b) Payment of a deposit will not prevent an account from becoming delinquent or prevent water service from being discontinued for non-payment of utility charges.

(c) A customer's deposit shall be returned when:

(1) The customer has kept account payments current for a period of three (3) years and is not currently delinquent in payments; or,

(2) Water service is discontinued, further water service will not be provided to the customer and all utility charges and fees have been paid in full. If a customer has unpaid utility charges or fees, the amount owed will be deducted from the deposit and the surplus, if any remains, will be returned to the customer. A deposit will not be returned if, after one (1) year following the discontinuation of water service, the customer has not provided the City with an address to mail the deposit.

(d) If an account becomes delinquent and it is necessary for the City to disconnect the service, water service shall not be restored to that location until the outstanding bill to the City has been paid and the deposit replaced. If the customer had a deposit returned to them at an earlier date, they will be required to supply a new deposit in accordance with this section.

4.026 Utility Bills.

(a) Utility bills shall be issued by the City by the fifth (5th) business day of the month. Utility bills shall contain the final date on which payment is due and payable. The due date shall be the twentieth (20th) day of the month.

(b) The City Administrator has the authority to allow a customer who is unable to pay the full amount of the bill to enter into a payment schedule.

4.027 Delinquent Accounts.

(a) An account for utility charges is delinquent if it is not paid by the due date designated on the bill.

(b) Late penalties.

(1) Delinquent accounts shall be assessed a late penalty of five dollars (\$5.00) and one and one-half percent (1.5 %) of the total amount owed, whichever is greater.

(2) A late penalty will be added to the customer's account every month the account is delinquent.

(3) The City Administrator shall report to the City Council annually regarding the cost to the City to collect delinquent accounts. Based on that report, the assessed late penalty may be amended to better recover the City's cost to collect delinquent accounts.

(c) Notices of delinquency.

(1) The City shall send a Notice of Delinquency by first class mail to any utility customer with a delinquent account within five (5) business days after the account becomes delinquent.

(2) The Notice of Delinquency shall state the amount of the overdue utility charges, the amount of assessed delinquent fees, the total amount owed, and that water service may be discontinued if the total amount owed is not paid.

(3) The Notice of Delinquency shall provide a deadline for payment. The deadline for payment shall be ten (10) days from the date of the Notice of Delinquency.

4.028 Discontinuance of Water Service for Non-Payment.

(a) If the customer does not pay the total amount owed by the date specified in the Notice of Delinquency, within five (5) business days the City shall provide Water Service Termination Notice to the customer by affixing such notice to the entrance with the closest proximity to the street of the dwelling or place of business receiving service. The Water Service Termination Notice shall:

(1) State that water service will be discontinued for non-payment of utility charges unless full payment, including delinquent fees, is made by the date specified in the Water Service Termination Notice.

(2) Set forth the total amount due.

(3) Set forth the date that payment must be made for the customer to avoid discontinuance of water service. The due date for payment shall be five (5) days from the date that the Water Service Termination Notice is affixed to the premises.

(4) Inform the customer of his/her right to appeal the validity of the termination and the procedure for appealing the discontinuation of water service as established by Section 8 of this Ordinance.

(b) Water service shall be discontinued if a delinquent account has not been paid in full by the date specified in the Water Service Termination Notice. The City Administrator, in the case of extreme hardship or by prior arrangement with the customer, has the discretion not to discontinue service to a delinquent account upon acceptance of a valid plan for the payment of all delinquent charges.

(c) Residential water service shall not be discontinued for non-payment in the post-noon period of any Friday or any regular business day proceeding a City-observed holiday.

(d) After water service has been discontinued, water shall not again be furnished until all outstanding charges have been paid in full.

(e) When water service is discontinued for non-payment of utility charges, a re-connection fee must be paid before water service is restored. The re-connection fee shall be set by Resolution of the City Council.

(f) If the City has shut off water service to a premises and someone other than an employee or agent of the City turns on the water, the water may be again shut off and sealed by the City. A second re-connection fee must be paid prior to removal of the seal and resumption of water service. For every incident in which a City seal is broken or removed by any person other than an employee or agent of the City, a penalty of two hundred-fifty dollars (\$250.00) will be assessed against the person responsible for water service charges. In addition, the person responsible for water service charges will be assessed the costs of repair to the City system resulting from the unauthorized resumption of water service.

(g) The City or any of its officers or employees shall not be liable for any damages that occur because water service is terminated pursuant to this section.

4.029 Appeals.

(a) A customer has the right to appeal a Water Service Termination Notice prior to water services being discontinued. A customer shall have five (5) business days from the date of the Water Service Termination Notice to file a request for review with the City Administrator at the City of Lowell, 107 East Third, Lowell, OR 97452. The request must be made in writing by noon on the fifth business day and must include:

- (1) The name and address of the customer.
- (2) The address of the affected premises, if different from the address of the customer.
- (3) A statement of the reasons why the customer believes the Water Service Termination

Notice was issued in error.

(b) The City Administrator shall hold a hearing and determine the appeal on the basis of the written statement and any additional evidence as the City Administrator deems appropriate. The customer shall be allowed at least ten (10) days written notice of the hearing on appeal. The City Administrator shall issue a written decision within ten (10) days of the completion of the appeal hearing and the decision shall contain findings of fact that substantiate his/her decision.

(c) The City Administrator's decision can be appealed to the City Council by mailing or delivering a written appeal to the City of Lowell, 107 East Third, Lowell, OR 97452. If a written appeal of the City Administrator's decision is not received by the City Council within five (5) business days of the date of the City Administrator's decision, the City Administrator's decision becomes final. If a customer timely appeals the City Administrator's decision to the City Council, the City Council shall review the decision for abuse of discretion and render a written decision within twenty-one (21) days of receiving the appeal. The decision of the City Council shall be final.

(d) The water service termination process will be suspended during the appeal process.

4.030 Property Owner Responsibility.

(a) The property owner of record is ultimately responsible for payment of all utility charges and delinquent fees. If the property is rented and the tenant fails to pay the utility charges, the City will transfer the delinquent utility charges of the tenant to the property owner.

(b) On the same day that the City sends a Notice of Delinquency to a tenant (in accordance with Section 8 of this Ordinance), the City shall mail a copy of the Notice of Delinquency by first class mail to the last address of the owner or the owner's agent that is on file with the City. On the same day that the City affixes a Termination of Water Service Notice to a tenant's premises (in accordance with Section 9 of this Ordinance), the City shall mail a copy of the Water Service Termination Notice by first class mail to the last address of the owner or the owner's agent that is on file with the City.

(c) If the City mails to the property owner or the owner's agent the notice(s) required by subsection 2 of this Section, water service shall not again be furnished to the premises until all outstanding obligations for water supplied to the premises have been paid in full.

4.031 Delinquent Account Collection Procedures. Delinquent utility charges may be collected through the use of a collection agent. The City Administrator or designee shall have the authority to select a collection agent and sign necessary documents. Fees charged by the collection agent to collect a delinquent account shall be added to the total amount owed on the delinquent account.

4.032 Returned checks. A charge will be added to accounts for any checks returned from the bank unpaid for any reason. The charge shall be set by Resolution of the City Council.

4.033 Water Leaks.

(a) Where water is leaking on premises receiving City water service and the leak is affecting the City's water supply in a manner that will likely result in inadequate water service to others, an emergency exists and the City may immediately discontinue service to the premises until the leak is repaired.

(b) Where water is leaking on premises receiving City water service but an emergency does not exist, the City may discontinue service to the premises if such conditions are not corrected within five (5) days after the customer receives written notice of the leak. Prior to discontinuing water service, the City shall provide the customer with a Water Service Termination Notice in the manner described in Section 9 of this Ordinance.

4.034 Owner-Requested Temporary Discontinuance of Water Service.

(a) A property owner may request that the City discontinue water service to his or her property during a period of temporary vacancy. Such a request shall:

(1) Be submitted to the City in writing at least ten (10) business days prior to the requested shut-off.

(2) Include the date of requested shut-off and the date of requested resumption.

(3) Include the name and address of the customer.

(4) Include the address of the affected premises, if different from the address of the customer.

(b) The property owner will be charged a fee established by Resolution for the temporary discontinuance and resumption of water service. If a request to temporarily discontinue water service is not made according to this section, billing will continue at the normal monthly rate during a period of vacancy.

4.035 Customer-Requested Discontinuance of Water Service. Every customer about to vacate any premises receiving water service shall request discontinuance of water service prior to the date service is to be discontinued on a form provided by the City. The customer is responsible for all water supplied to the premises until service is actually discontinued by the City or two (2) days after the City receives notice, whichever occurs first.

4.036 Quarterly Status Report. The City Administrator shall report to the City Council quarterly the status of the City's utility accounts. The report should include information regarding actions being taken to collect delinquent accounts, payment schedules established for customers, and any event or circumstance related to the City's utility accounts that the City Administrator deems significant.

4.037 Compliance with State Law. All sections of this Ordinance are intended to be consistent with state law. In the event of a conflict between any section of this Ordinance and state law, state law controls.

4.038 Severability. The provisions of this ordinance are severable. If a portion of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

4.039 Corrections. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein to the provisions added, amended or repealed herein.

4.040-4.099 Reserved for Expansion.

WATER SYSTEM

4.100 Water System, General.

4.101 Code Established. Unless indicated otherwise, Sections 4.100 through 4.170 of this Code are adopted by Ordinance 254.

4.102 Definitions. Wherever the following words are used in LRC 4.100, they shall have the meanings ascribed to them in this section:

- (a) Applicant means any persons, firm, partnership, association, or corporation, acting for himself or through his employee or agent.
- (b) City means the City of Lowell, Oregon.
- (c) City Administrator means the City Administrator for the City of Lowell or his authorized representative.
- (d) Commercial user means any customer of the municipal water system who is neither a residential, multiple, irrigation, fire, or industrial user. Such term shall include institutional and governmental users.
- (e) Customer line means that piping connecting the meter to the building plumbing system.
- (f) Dwelling unit means a facility designed for permanent or semi-permanent occupancy and provided with minimum kitchen, sleeping, and sanitary facilities.
- (g) Fire protection service means an unmetered connection to the public water mains intended only for the extinguishment of fires and the flushing necessary for its proper maintenance.
- (h) Irrigation service means a metered connection intended for seasonal use and delivering water which is not discharged to the sanitary sewer.
- (i) Multiple dwelling means a structure housing two or more dwelling units.
- (j) Non-sewer service means any metered service using water none of which is discharged to a sanitary sewer. May include irrigation service.
- (k) Person means any natural person and includes firm, corporation, organization, and agency.
- (l) Premise means any lot, parcel, or tract of land owned by a single entity.
- (m) Service line means the line or pipe connecting from the water main to the water meter.
- (n) Temporary service means a line connecting the nearest water main to the premises, in lieu of a permanent water main adjacent to the user's property.
- (o) Water main means a pipe or conduit laid in a public street or easement to which a service line is connected.

4.103 Connection Required. Connection to the municipal water system is mandatory for all new development within the City. Properties having water service provided by the City are required to remain connected to the municipal water system.

4.104 Construction to Conform to Standards. All public or private water distribution systems to be connected to the municipal water system, whether publicly or privately constructed, shall conform to standards of design, sizing, materials, and workmanship prescribed by the City.

Failure to meet standards shall be grounds for refusal of acceptance. Service connections will not be made until the system is approved and accepted.

4.105 Inspection, Approval, Etc. of Construction. Reasonable notice shall be given to the City to inspect and test all work in connection with the construction of water mains by private contractors. Mains shall meet construction standards, leakage tests, and bacteriological tests prior to acceptance.

4.106 Connections and Tampering with Pipes. Connections to water distribution mains for the purpose of extending such lines or for providing water service shall be made only by employees of the City or contractors employed by the City unless approved otherwise by the City Administrator. It shall be unlawful for any person to attach to or to detach from any water main or connection through which water is supplied by the City from the municipal water system, or to interfere in any manner or tamper with such pipes or connections, without having first obtained the written consent of the City.

4.107 Unlawful to Operate Valves and Apertures. It shall be unlawful for any person, other than an employee of the City in the normal performance of their duties or a contractor under contract to the City, to operate valves and appurtenances connected with the municipal water system without the approval of the City Administrator. In addition, fire hydrants may be operated by personnel of the fire department in performance of their regular duties. Fire hydrants shall not be used for purposes other than fire-fighting, flushing mains, and filling street cleaning and similar equipment. Water may not be taken from a hydrant for private purposes unless application for service from a hydrant has been made and approved by the City and a meter set to measure water used for private purposes or other fee paid as determined by the City.

4.108 Public Fire Protection. Consistent with its primary purpose of providing adequate potable water for residential, commercial, and industrial use, the water distribution system shall be designed to provide public fire protection by means of fire hydrants. The location of fire hydrants shall be approved by the Chief, Lowell Fire District. Fire Hydrants required by new development shall be paid for by the developer. The main system shall be designed insofar as possible to provide fire flows recommended by the Insurance Services Office. All mains, constructed or reconstructed, upon which fire protection depends shall be a minimum of six inches in diameter and wherever possible shall be looped to provide flow from two or more directions.

4.109 Contamination.

(a) It shall be unlawful for any person to in any way contaminate or pollute the water in the reservoirs or pipes of the municipal water system or in any fountain, hydrant, or place of storage of the water supply of the city or any of its inhabitants.

(b) It shall be unlawful for any person to throw any rubbish, debris, or any other thing into any water reservoir belonging to the city.

4.110 Service Beyond Corporate Limits.

(a) Except as otherwise provided for below, water service will not be provided beyond the corporate limits of the City of Lowell unless annexation has been approved.

(b) The City will provide water service outside the City boundary when directed to do so pursuant to state statute.

(c) The City Council may, upon application for water service outside the City boundaries, provide such service if the applicant can demonstrate an extreme hardship and has made every reasonable effort to acquire water through other sources. Final approval for hardship water service is contingent upon approval by Lane County.

(d) All costs to extend water service outside the City boundaries or to newly annexed properties shall be paid by those benefiting from the extension using the process established in **LRC 4.120** and/or through establishment of a Local Improvement District.

4.111 Water Waste Prohibited.

(a) It is unlawful to allow waste of City water by knowingly or negligently causing, authorizing or permitting such water to escape from its intended beneficial use into any river, creek, natural watercourse, depression, lake, reservoir, storm sewer, street, highway, road, or ditch.

(b) For the purpose of this section:

(1) "Waste" means the use of water in excess of the reasonable volume necessary to meet the beneficial use; and

(2) "Beneficial use" means the reasonable efficient use of water.

4.112 Water Use Restriction Authority. (adopted, Ord 172) The City may restrict the use of water from time to time by implementation of one of the following orders of restriction, which need not be applied in sequence.

(a) The City Administrator may issue the first order of restriction which shall limit water use as follows: Non-essential use of water including but not limited to watering of lawns, gardens and shrubberies; washing of vehicles; filling, maintaining or cleaning of decorative fountains or swimming pools is restricted to even numbered days for service addresses ending with an even number and odd days for service addresses ending with an odd number. Exceptions: Commercial car washes and newly seeded or sodded lawns which may be watered as necessary until established.

(b) The City Administrator may issue the second order of restriction which altogether prohibits all non-essential uses of water identified above. The same exceptions apply.

(c) The City Council may issue the third order of restriction which shall prohibit the use of water for any purpose beyond a specific amount established by Resolution. In the event of water use in excess of the established limitation by any individual water service, the City Administrator is authorized to discontinue water service by shutting water off at the meter.

(d) Willful or continued violation of any of the orders established above shall be deemed a Class B violation.

4.112-4.119 Reserved for Expansion.

4.120 Extension of Municipal Water System by Private Developers.

4.121 Extension or Enlargement of Water Main by Developer. As an alternative to the City constructing an extension to the municipal water system or enlarging a current pipe to provide additional capacity, the City may, under conditions specified in **LRC 4.122 to 4.126**, permit a developer to make such an extension or enlargement. Developers making enlargements to existing pipes may be required to pay the cost to transfer existing service connections to the enlarged pipe.

4.122 Filing for Preliminary Consent. The Developer shall file a preliminary request with the City to construct a water main extension or enlargement, setting forth generally the proposed size and location of the water main and the purpose for which it is to be constructed. This requirement may be in the form of a land division tentative plan application filed under **LRC 9.210**. After receiving preliminary consent from the City that the proposed extension may be constructed by the Developer under the terms of this section, the Developer may proceed within six months of the consent to file an application with the City.

4.123 Application by Developer. A developer, who had received the City's preliminary consent to construct an extension or enlargement to the municipal water system and desires to proceed therewith, shall make application to the City. Such application shall provide the following information:

- (a) Detailed plans and specifications conforming to adopted standards of the City;
- (b) Cost estimates for the project, certified by a qualified professional engineer;
- (c) Legal description and property owners names and addresses of all property that would be benefited by the project;
- (d) Name of the contractor who shall be doing the project; and
- (e) Such other information the City Administrator or City Engineer deems necessary for the approval of the project.

4.124 Apportionment of Costs.

- (a) If the Developer is the only property owner that benefits from the proposed project, the developer shall pay all the costs of the project unless approved otherwise by the City Council.
- (b) If there are other properties, in addition to the Developer's property that benefit from the project, the Developer may chose one of the following options:
 - (1) Agree to pay the entire cost of the project.
 - (2) Enter private agreements with other property owners to pay their share of the cost of the project. The City would not be a party to any such agreements and the final responsibility for paying all costs would rest with the Developer.
 - (3) Request that the City approve a Local Improvement District in accordance with **LRC 3.020**, to allocate the costs of the project. If a Local Improvement District is formed to allocate project costs, that portion of the costs allocated to the Developer will not be financed by the City.
- (c) Costs, paid by the Developer, attributed solely to enlarging existing water lines to serve new development may, with City Council approval, be allowed as a credit towards System Development Charges for improvement in accordance with **LRC 3.050**.

4.125 Approval by the City. The City Council shall approve or deny the application and apportionment of cost and, if approved, execute an improvement agreement with the Developer. If any portion of the cost of the project is to be paid by the City through a local improvement district or otherwise, the agreement will clearly state the amount to be paid by the City and when payment is due. Upon execution of the agreement, the developer may proceed with the water main extension in accordance with the approved plans and specifications. The Developer shall notify the City when construction commences and the construction shall be completed within one year of the day of the approval. All permits required under City, county and/or state law shall be obtained by the Developer or his contractor prior to starting work.

4.126 Filing Statement of Cost by the Developer. Upon completion of the water main extension project, the Developer shall file with the City an itemized cost statement of the

completed improvements. When a Local Improvement District has been approved and the total cost shown on said statement exceeds the approved engineer's estimate, the City Council may approve the overage for the purposes of apportioning costs if they are satisfied the overage was due to conditions not readily foreseen at the time of the construction. Any other cost overages will be borne by the Developer.

4.127-4.129 Reserved for Expansion.

4.130 Conditions of Service.

4.131 Application for Water Service. Each person applying for water service shall make application in accordance with LRC 4.024.

4.132 Sizing of Service Lines and Meters. The size of the service line and meter shall generally be at the option of the user. The City shall insure that the size of the connection requested is reasonable for the use intended and is within the capabilities of the distribution system without diminishing the quality of service to other users in the vicinity. Minimum size of connection shall be three-quarters of an inch inside diameter. The size of meter shall not exceed the size of service line.

4.133 Meters Owned by City. All water meters shall be owned and maintained by the City. Meters may be tested, repaired, relocated, and interchanged as required without regard to who paid the initial cost of the meter and installation so long as the property continues to be supplied through a meter adequate for its needs.

4.134 Users Individually Metered. Each premise served shall be individually metered. Service to more than one user, or multiple meters for the same user, shall not be combined for the purpose of obtaining a more favorable water rate. Multiple housing complexes, manufactured home parks, and similar users may be served through master meters if under common ownership.

4.135 Meter Accuracy. All meters used to measure quantities of water for determining charges shall be maintained in such condition as to register within an accuracy of plus or minus 2 percent the amount of water passing through the meter. Meters used and accuracy of registration shall conform to standards set by the American Water Works Association.

4.136 Change in Meter Size. Size of the meter serving a premise may be changed at the request of the user upon payment of the estimated cost of making the change. Increase in size will require increase in the size of the service line in most cases.

4.137 Access to Premises. Employees of the City shall have access, upon proper identification, to all premises at which city water is being used for the purpose of determining that no hazard exists to the public water supply as a result of the manner in which the water is being used. Such access shall be at reasonable hours and shall not interfere with the customer's normal use of his premises.

4.138 User Responsibility for Damage to Facilities. Each user of water shall so protect his facilities that hot water cannot be returned to the water mains. Meters and pipelines damaged by hot water will be repaired at the expense of the user.

4.139 Private Booster Pumps Prohibited. No booster pumps shall be installed by the user for the purpose of increasing water pressure or delivery without the express written permission of the City Administrator.

4.140 Interruption of Service, Notification. Wherever practicable, users will be notified 24 hours in advance of any planned interruption of service or shutdown of mains for repair or alterations. The City assumes no responsibility for providing uninterrupted water service and will not be liable for damages resulting from such interruptions.

4.141 Plumbing to be Kept in Repair. It shall be the responsibility of the user to keep his piping and fixtures in good repair to prevent damage to premises and waste of water. The City shall not be responsible for damage to property resulting from turning on or continuing water service to premises having defective plumbing.

4.142 Electrical Grounding. The City shall not be responsible for the use of its water distribution system for grounding of electrical circuits. Use of nonmetallic materials in mains and service lines precludes reliance on the water system for electrical grounding.

4.143 Temporary Service Connections.

(a) In certain instances where, in the judgment of the City Administrator, construction of a water main to serve a given piece of property is not advisable or feasible, water service may be provided by a temporary connection to some other main, pending construction of a permanent main to serve the property.

(b) The applicant shall be required to pay all costs for the temporary connection, including the installation fee and any established System Development Charges. Upon installation of a permanent connection, the applicant will pay only the actual cost to make the permanent connection.

4.144 Abandonment of Services and Water Mains.

(a) The City Administrator may cause the removal or abandonment of any unused service lines when its further need is not apparent and when in his judgment removal is appropriate to reduce leakage or future maintenance responsibility. Subsequent service to the property shall be treated as a new service as provided for elsewhere in this Code.

(b) If as a result of removal or abandonment of a service main a new meter location is required, within ninety days of written notice customers shall connect, at their expense, to the new meter location provided at the customer's property line.

4.145-4.149 Reserved for Expansion.

4.150 Charges, Billing and Collection. Water Service billing and collection will be in accordance with LRC 4.020 through 4.035. The following additional water service policy is established.

4.151 Water Service Billing. All billings for water service shall be made monthly on the basis of the amount of water used during the previous month. Monthly water meter readings will be made on or about the 20th day of each month. Water shall be measured in gallons and shall be billed to the nearest gallon. If, for any reason, it is impossible or impractical to read the meter; consumption may be estimated, based on the previous history of use, until the meter can be read.

4.152 Denial of Service. Service may be denied to any person who has left an unpaid water bill at another address, until such bill is paid. Service may be denied to any person until restitution has been made for any damage or loss of revenue resulting from tampering with or bypassing water meters or locking devices.

4.153 Adjustment of Bills.

(a) Unusually high water bills resulting from leakage occurring in the customer's plumbing system will not normally be adjusted. It is the customer's responsibility to maintain their plumbing system leak free. The City Administrator is authorized to approve an adjustment in cases of extreme financial hardship, but under no circumstances may adjustments be made that lower the water bill to under the lowest incremental water rate. As a courtesy, the City may notify customers with unusually high water use of such use as soon as possible after the monthly meter reading.

(b) Billings which the City has made erroneously may be corrected retroactively for a period not to exceed two years upon acknowledgment by the department of the error. Interest at the rate of 6 percent shall be paid on overcharges that are over one year old.

4.154 Irrigation and Non-Sewer Accounts. Water service connections used solely for irrigation or for other uses which do not discharge water to a sanitary sewer may be billed for water service only, without payment of a sewer service charge.

4.155 Water Not to be Resold. Water is not to be resold under any circumstances with the one exception that water districts or associations may upon approval of specific agreements by the City, be authorized to resell water.

4.156 Meters Billed Individually. Each metered service will be billed separately where more than one meter serves an individual premise or user. Meter readings will not be combined for the purpose of obtaining a lower billing.

4.157 Rate Structure. The rates and charges for the sale and distribution of water by and through the municipal water system shall be in accordance with **LRC 4.011**.

4.158 Partial Month Service. For new water accounts, first month's water use will be billed based on a meter reading taken at the time the account is opened until the next month's regular meter reading. For water accounts closed after the date of the previous month's meter reading, the City will read the meter and provide a final bill for the quantity of water used since the last meter reading. A prorated amount of the fixed monthly fee will also be charged.

4.159 Water Supplied Through Fire Hydrants.

(a) Where water service of a temporary nature can be supplied through a fire hydrant connection without jeopardizing service to other users or interfering with fire protection, all such water use

shall be metered or the cost thereof otherwise negotiated. The charges for this service shall be that established by resolution.

(b) The user will be billed for costs incurred with repairing damaged meters and fire hydrants.

4.160 Charges for Service Connections.

(a) A service connection charge will be made for each premise not previously served with water for the cost of labor and materials of providing the main tap, service line, and meter installation, as prescribed by resolution of the council.

(b) If actual costs to the City to provide service connections exceed 125% of the service connection charge due to special construction circumstances, the applicant will be required to pay that amount of cost in excess of 125% of the service connection charge.

4.161-4.169 Reserved for Expansion.

4.170 Violations.

(a) Violations of LRC 4.106, 4.107 and 4.109 are considered Class A Violations.

(b) Violations of all other provisions of LRC 4.100 through 4.169 are considered Class B Violations.

(c) The City reserves the right, in addition to any fines that may be imposed, to discontinue water service or exercise any other remedies provided for by law for violations of LRC 4.100 through 4.169.

4.071-4.079 Reserved for Expansion.

4.180 Cross Connection and Backflow Prevention. There is established a Cross Connection Control and Backflow Prevention Program to be administered by the Department of Public Works for the City of Lowell. Sections 4.180 through 4.188 are adopted by Ordinance 164 unless specified otherwise.

4.181 Definitions.

(a) "Backflow," as used in this chapter, means the reverse of flow from its normal or intended direction of flow. Backflow can be caused by back-pressure or back-siphonage.

(b) "Cross Connection," as used in this chapter, means any actual or potential physical connection between a potable water line and any pipe or vessel containing a nonpotable fluid so that it is possible to introduce the nonpotable fluid into the potable fluid by backflow.

(c) "Auxiliary Water Supply," as used in this chapter, means any source of water other than that supplied by our municipal water system.

4.182. The purpose of this chapter shall be to establish programs for controlling and eliminating cross connections and to establish standards for the installation of backflow prevention devices.

4.183. If the city has reasonable cause to believe that an existing or potential cross connection is located on the consumer's premises, the city shall deny or discontinue water service to those premises which contain an existing or potential cross connection until:

(a) A state-approved backflow device or method commensurate with the degree of hazard is installed and approved by the City of Lowell; or

(b) the cause of the hazard is eliminated.

Service may also be denied or discontinued if access to the consumers' premises for inspection to determine whether a cross connection or potential cross connection exists is denied.

4.184. The city adopts and incorporates herein by reference the "cross connection control requirements," dated 1991, Oregon Administrative Rule 333-61-070, with the following amendments:

(a) There shall be added to Oregon Administrative Rule 333-61-070(4) a subsection (f) which shall read as follows: "The service is larger than two inches."

4.185. The city adopts and incorporates herein by reference the "backflow device installation standards." dated 1996, Oregon Administrative Rule 333-61-0071.

4.186. If the city has not received the results of the annual test, as required in this chapter, within thirty (30) days of the anniversary date for such annual testing, or within ten (10) days of the date of installation or relocation of the device, or the date of the city's discovery that the device was installed without testing as applicable, the city may order the test and add the cost of the test onto the property owner's water and/or sewer bill.

4.187. In the event that the results of the tests required by this chapter and ordered by the city or the property owner indicate that repairs are necessary, the repairs must be made at the owner's expense and a new test made and results of the test forwarded to the city within ten (10) days of the date of the first test. In the event that the city has not received evidence of the repairs and the results of the second test within ten (10) days of the first test, the city may cause to have the repairs made and add such costs to the water and/or sewer bill of the property owners. This section shall apply to all tests and repairs until test shows the backflow device is functioning properly.

4.188. The city may discontinue the water service of any person who refuses or fails to pay such testing or repair charges added to the customer's water and/or sewer bill.

4.189-4.199 Reserved for Expansion.

SEWER SYSTEM

4.200 Sewer System, General. Sections 4.200 through 4.273 are adopted by Ordinance 266 unless otherwise specified.

4.201 Intent and Purpose. The intent and purpose of this section is to provide for the orderly functioning of the publicly owned sewer treatment works; to set forth uniform requirements for direct and indirect contributors to the wastewater collection and treatment system for the City of Lowell; to enable the City to comply with applicable State and Federal requirements; and to protect the environment.

4.202 Objectives.

(a) The objectives of LRC 4.200 are:

(1) To provide control of construction and use of the city wastewater system.

(2) To prevent the introduction of unacceptable pollutants into the municipal wastewater system, into receiving waters, the environment, or the atmosphere or which might be otherwise incompatible with the wastewater treatment system.

(3) To protect the health of the personnel working in the collection system and at the City's wastewater treatment plant.

(b) This section provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits to certain users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

4.203 Abbreviations and Definitions.

(a) For the purpose of LRC 4.200, the following abbreviations mean:

- (1) ASPP. Accidental Spill Prevention Plan.
- (2) CFR. Code of Federal Regulations.
- (3) DEQ. Department of Environmental Quality.
- (4) EPA. Environmental Protection Agency.
- (5) USC. United States Code.
- (6) POTW. Publicly owned treatment works.
- (7) ORS. Oregon Revised Statutes.
- (8) I/I. Infiltration and Inflow.
- (9) OSPSC. Oregon State Plumbing Specialty Code.

(b) For the purposes of LRC 4.200, the following words and phrases shall have the meanings hereinafter designated:

(1) Act or "the Act." The Federal Water Pollution Control Act also known as the Clean Water Act, as amended, 33 USC 1251, et seq.

(2) Administrator. City Administrator for the City of Lowell or his/her authorized representative.

(3) Available sewer. Any sewer that can be used without the need to acquire easements and sufficient grade exists to serve the property.

(4) Building drain. That part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structure and conveys the same to the building sanitary sewer. The building drain is considered to end at a point five feet outside the established line of the building or structure.

(5) Building sanitary sewer. That part of the horizontal piping of a draining system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to the POTW, private sewer, individual sewage-disposal system or other point of disposal.

(6) City. The City of Lowell through the City Council or Administrator as defined in this section and as authorized by this code.

(7) Code. The Lowell Revised Code.

(8) Collection system. Facilities owned and maintained by the City for collecting, pumping, conveying, and controlling wastewater. This includes service connection lines from the sewer main to the edge to the right-of-way or easement in which the service line is located wherever clean-outs are provided at or near the right-of-way.

(9) Commercial user. Any user other than a domestic or industrial user.

(10) Cooling water. Water other than sewage or industrial waste which is used as a medium for carrying away excess heat from any apparatus, appliance, mechanism, device, or thing, and which, in the course of such cooling process, is not mixed or commingled with any other substance or used as a means of carrying off any other substance, in suspension or in solution, thereby exiting such cooling process in substantially the same condition, save for temperature as when it entered.

(11) Direct discharge. The discharge of treated or untreated waste directly to the waters of the State of Oregon.

(12) Domestic sewage or domestic waste. The liquid and water borne wastes derived from the ordinary living processes, free from industrial wastes, and of such character as to permit satisfactory disposal, without special treatment, into the public sewer or by means of a private sewage disposal system.

(13) Domestic user. Any person who discharges only domestic sewage.

(14) Drainage waste. Storm water, ground water, surface drainage, subsurface drainage, spring water, well overflow, roof drainage or other like drainage other than sewage or industrial waste.

(15) Dwelling. A facility designed for permanent or semi-permanent occupancy and provided with minimum kitchen, sleeping, and sanitary facilities for one family.

(16) Environment. Any naturally occurring river, stream, creek, or other waterway, any land mass, the atmosphere, or any subsurface water, aquifer or ground water or any manmade edifice directly or indirectly connected to waterways, land masses, atmosphere, or ground water as herein listed.

(17) Flow. The daily total of wastewater flow from an industrial, commercial or domestic user.

(18) Hazardous material. Any material capable of posing an unreasonable risk to health, safety, and property, including but not limited to a substance having one or more of the characteristics of being corrosive, explosive, flammable, spontaneously ignitable, an oxidizer, toxic, or radioactive.

(19) In the opinion of the City. Any opinion rendered on any subject in this section by any person duly authorized to render such an opinion. Appointment to an appropriate position will be deemed as being given said authority.

(20) Indirect discharge. The discharge of non-domestic pollutants from any source regulated under Section 307 (b) or (c) of the Act (33 USC 13 17), into the publicly owned treatment works including holding tank waste and industrial waste.

(21) Industrial user. A user that is a source of non-domestic pollutants.

(22) Industrial waste. Any waste from a non-domestic source which is solid, liquid, or gaseous in nature and results from any production, manufacturing, or processing operation of whatever nature, including but not limited to the contents of chemical toilets, septic tanks, and waste holding tanks.

(23) Infiltration. Ground water entering a sewer system and service connection by such means as, but not limited to, defective joints, broken or cracked pipes, or improper connections.

(24) Inflow. Storm water discharged into a sewer system and service connections from such sources as, but not limited to, roof drains or storm drain systems.

(25) Institution. Any building or group of buildings used as a hospital, correction facility, school, or training facility, publicly or privately owned.

(26) Lateral sewer. Any public sewer to which a building sewer connects or may connect.

(27) Permitted commercial user. Any user of the POTW who is required by the director to acquire a City permit which may require the user to meet pretreatment requirements and provide discharge sampling and flow quantities due to the nature of their discharge.

(28) Person. Any individual, firm, corporation, organization, association, or agency.

(29) Pollution. The degradation of the chemical, physical, biological, or radiological quality of the environment including the ground, the atmosphere, surface and subsurface waters, including storm drainage. Pollution includes but is not limited to change in temperature, taste, color, turbidity, silt, odor, or such discharges of any liquid, gaseous, solid, or radioactive substance into any ground, surface, or storm runoff waters which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial use or to livestock, wildlife, fish, or other aquatic life or the habitat thereof.

(30) Pollutant. Any spoil, waste, residue, sewage, garbage, sludge, munitions, chemicals, biological materials, radioactive materials, heat, rock, sand, dirt, soil, agricultural, municipal, or industrial material discharged to the environment.

(31) Pretreatment or treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants to a less harmful state prior to discharge. The reduction or alteration can be obtained by physical, chemical, or biological processes, process changes or other means in a manner approved by the City.

(32) Private collection system. A privately owned and maintained sewer system normally six or eight inches in diameter, installed on private property.

(33) Public sewer. Any sewer in public right-of-way or easement owned, operated and maintained by the City.

(34) Residential user. The owner, lessee, or occupant of a single dwelling unit in one structure.

(35) Septic tank waste. Waste from chemical toilets, campers, trailers, septic tanks, tank trucks, or other vessels.

(36) Sewage. The wastewater derived from human habitation and use of buildings for domestic, commercial, institutional, or industrial purpose and free from drainage waste.

(37) Sewer or sanitary sewer. All sewage and any facilities convenient or necessary to carry away or dispose of sewage.

(38) Sewer Systems. Any system of conduit, pipes, drainage way, creeks or other waterways which transports either sanitary waste or drainage waste. Hereafter, the words "sewer" and "drains" shall represent components of a sewer system and have the definitions as provided in this chapter.

(39) Sewer user. Any person using a city or private sewer or who has a residence, commercial building, industrial building, or other structure, containing plumbing, requiring connection to a sanitary sewer.

(40) Single family dwelling. Any residential building designed to house one family.

(41) Unpolluted water. Water to which no sewage, pollutant, or industrial waste has been added, such as untreated cooling water, rain water, or drainage waste.

(42) User or users. Any person using the city sanitary sewer system.

(43) Wastewater. All sewage and industrial wastes, treated or untreated, discharged to a collection system.

(44) Water user. Any person using water through the facilities of the municipal water systems.

4.204 Connection to Sewers Required. Every building containing plumbing, on property any portion of which is within 300 feet of an available sewer shall be connected to the public sewer. Properties within 300 feet with existing on-site septic tanks may continue to use such septic tanks, but must connect to the public sewer at such time as the septic tank or drainfield requires a permit for repair or replacement. New development on properties exceeding five acres in size where all portions are outside of 300 feet of an available sewer may be permitted for an on-site septic tank as long as such property is not further divided, but must connect to the sewer when extended to within 300 feet of the property.

4.205 Permit Requirements. The City owned sanitary sewer system will require all permits specified below. All permit applications will be submitted to the City and fees paid as established by resolution of the City Council.

(a) Building Sanitary Sewer. A Building (Plumbing) Permit is required for all private building sanitary sewer construction, repair and reconstruction. All such work shall be inspected by a qualified building inspector and shall pass tests required by the inspector to insure the private sewer lines meet construction standards for tightness.

(b) Industrial, commercial, and institutional users. Industrial, commercial, and institutional users shall submit with building plans an explanation of the nature of the industrial, commercial or institutional activity to be conducted and an analysis of the planned content and quantity of wastewater discharges to the public system. The City requires pre-treatment of wastewater discharges if contents of wastewater discharges might do harm to sewer collection or treatment facilities

(d) Street opening permit. Applicants for permits to construct, repair, or reconstruct any public sewer must conform with City requirements for making cuts or excavations in, on or under streets and alleys.

(e) Tapping of sewer lines. If no wye or building sanitary sewer is available, connection must be made by tapping the sewer main. Sanitary and storm sewers shall not be interconnected. Tapping will be done only under the direct supervision of Public Works staff. A fee for tapping a sanitary main shall be paid as set forth in the City fee resolution.

(f) Tapping of manhole. If determined to be necessary by the City, a building sanitary sewer may be connected to the public sewer main by tapping the manhole indicated by the City. Tapping will be done only by qualified persons under the direct supervision of Public Works staff. A fee for tapping manholes shall be the same as for tapping a sewer line

(g) Sewer cap permit. A building sanitary sewer cap permit and evidence that a sewer has been properly capped is required before a demolition or moving of a structure.

(h) Sewer repair permit. Every instance of repair or reconstruction of a building sanitary sewer will require a plumbing permit.

(i) Permit fees, time of payment. All permit fees shall be paid prior to the issuance of any permit by the City and prior to the commencement of any work for which a permit is required. The fee for obtaining a permit to perform work commenced prior to payment of the permit fee shall be twice the applicable fee as set forth in the permit fee schedule.

(j) Stop work order. Whenever any sewer work is being done contrary to the provisions of this Ordinance, the City may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the City to proceed with the work.

4.206 Approval of Plans. Plans for all public and private sewer systems shall be reviewed and approved by the City prior to construction. Such plans shall conform to the sewer plan and standards prescribed established by the City.

4.207 Common Sewer. The drainage system of each new building using an existing sewer shall be separate and independent from that of any other building. Every building shall have an independent connection with a public or private collection system.

4.208 Existing Private Septic Tank Effluent Pump (STEP) Wastewater Collection Systems. Ordinance 147, permitting STEP wastewater collection systems, was repealed by Ordinance 266. Existing STEP wastewater collection systems approved pursuant to Ordinance 147 are authorized to continue under the following provisions:

(a) The STEP System shall be continued to be owned by a formal association of property owners with a written legal document specifying rights and responsibilities of the property owners for the maintenance, operation, repair, and replacement of the private system. Any changes to the written legal document establishing the private STEP System shall be approved by the City. The private STEP System shall continue to be permitted the Oregon Department of Environmental Quality and all requirements of said permit shall be adhered to and complied with.

(b) New connections to the private STEP system may be permitted at the sole discretion of the City if all of the following requirements are met:

(1) The new connections are the result of properties utilizing the private system being divided and developed.

(2) The private association has approved the additional connection and demonstrated to the City's satisfaction that the approval has been made in accordance with the written legal document establishing the private system.

(3) The private association has demonstrated that capacity exists in the private system to support the additional capacity needs to the satisfaction of the City Engineer.

If all the above requirements are not met, new development must connect directly to the City's system in accordance with **LRC 4.204**.

(c) The private system shall be operated in a manner which will not allow noxious odor or substances detrimental to the City's sewage treatment operation to enter the City's system. If determined necessary by the City, pretreatment will be required before effluent for the STEP system enters the public sewer system. Cost for such pretreatment requirements will be the sole responsibility of the private association.

(d) The City, at its sole discretion and with the approval of the private association and permitting approval from the Oregon Department of Environmental Quality, may become legal owner of an existing STEP System and assume responsibility for maintenance, operations, repair and replacement of the system. As a condition of accepting dedication of private system to the City, the City may require the association or individual property owners to repair or replace defective parts, equipment or transmission lines and pay all costs for such repair or replacement prior to accepting said system dedication. Furthermore, the City will require, as a condition of acceptance of the private system, that public sewer easements be established on all private land where systems components to be dedicated to the City are located. All costs to record such easement shall be borne by the association or property owners.

(e) All property owners who dispose of their sewage through the existing private STEP systems into the public sewer are required to pay the same sewer service charge required of all customers connected directly to the public sewer.

4.209 Sewer Construction to Conform to Standards. All public or private sanitary systems, whether publicly or privately constructed, shall conform to standards of design, materials, and workmanship prescribed by the City. Failure to meet tests for water-tightness shall be grounds for refusal of acceptance. Permits to connect to such sewers will not be issued until the system is approved and accepted.

4.210 Inspection, Approval of Construction.

(a) Reasonable notice shall be given to the City to inspect all work in connection with the construction or reconstruction of any public sewer or connection thereof to a city sewer main while the work is still uncovered. In the event the piping is backfilled, it shall be sufficiently exposed so an inspection may be made. All work shall be done according to the specifications prescribed by, and subject to the approval of the City.

(b) Use of the public sewer will not be allowed until the building sewer and/or the public improvement receives final approval from the City.

(c) All new building sanitary sewers shall be tested for tightness either by low air pressure or hydrostatically. The test shall last 15 minutes and shall have no loss in either method. Minimum test pressure shall be 3.5 pounds per square inch in either method. When tested, existing building sanitary sewers, including those previously taken out of service and capped, shall be tested for tightness in the same manner as new building sanitary sewers except that a 50 percent loss of pressure will be allowed in the 15-minute test.

4.211 Connection to Sewer Mains or Laterals. Sanitary sewer connections shall be made only to the single wye branch in the lateral sewer for which the connection is designated. If no wye is available, connection shall be made by tapping the sewer main. No person shall interfere in any manner or tamper with such pipes or connections, without having first obtained the written consent of the City.

4.212 Extension of Municipal Sewer Systems by Private Developers. Private developers are responsible for all costs to the City for extension of the municipal sewer to newly developed property unless a local improvement district is established which assesses each property owner that benefits from the extension in accordance with **LRC 3.020**. The City may require or the developer may request the extension of the municipal sewer to be completed by the developer in accordance with **LRC 4.220**.

4.213 Tapping of Manholes. Tapping of building sanitary directly into manholes is prohibited except:

(a) Where provided for in original design and approved by the City, or

(b) When allowed by written permission of the City because no other course is practical.

4.214 Responsibility for Building Sanitary Sewer.

(a) It shall be the responsibility of the owner, lessee, or occupant of a building to maintain said building sanitary sewer or private collection system in a free flowing and watertight condition, from the structure served to the public sewer main.

(b) It shall be the responsibility of the City to make any necessary repairs to the service lateral from the cleanout at the property line to the public sewer main, where such clean-out exists.

(c) When the City contracts for a sanitary sewer reconstruction, replacement or rehabilitation project, the city will replace any building sanitary sewer from the building drain to the property line or easement found defective in accordance with **LRC 4.215** and invoice the property owner

for the cost of such work. In the event the property owner does not permit the City to perform the above-mentioned work, the City will require the property owner to test the building sewer from the building drain to the property line within 30 days of the contract project completion with the method described in **Section 4.215**. If the building sanitary sewer is found defective in accordance with **Section 4.215**, the owner shall immediately proceed to replace the building sewer at the owner's expense.

4.215 Infiltration or Inflow Limitations; Private Sewers and Building Sanitary Sewers.

(a) New and existing private and building sewers will be monitored for leaks or discharges of extraneous water. This monitoring may take the form of, but is not limited to:

- (1) Direct visual observation;
- (2) Indirect measurement;
- (3) Teleinspection; or
- (4) Air or water pressure tests, smoke tests, or exfiltration tests.

(b) If in the opinion of the City, such monitoring shows a private or building sanitary sewer to be defective, no further proof is needed for the City to require the sewer be replaced to current standards. Replacement shall be required if:

- (1) The sanitary sewer service fails a tightness test as described in "a" above; or,
- (2) Existing material is found unacceptable by the City.

If the responsible user elects to dispute the opinion of the City, the user may test the service at their own expense in the presence of knowledgeable City personnel. The results of the test will be the basis of the final replacement decision.

(c) All new construction of private sewer collection systems including single family dwellings, shall conform to standards established by the City. Those standards may be found in the OSPSC.

(d) All existing private sanitary sewer collection systems shall be maintained in a safe and sanitary condition. Existing private sanitary sewer collection systems exceeding a maximum allowable infiltration/inflow rate of more than 150 gallons per day per single detached living unit or 600 gallons per acre per day are deemed unsafe and unsanitary and shall be repaired.

(e) Those users listed in subsection (d) of this section who do not comply with the infiltration/inflow regulations shall have a period of time as determined by the City, but not to exceed 12 months to reach compliance with the regulations.

4.216 Capping Abandoned Sewers Required.

(a) Before the moving or wrecking of a structure is allowed a permit must be obtained and evidence must be presented showing the sewer has been properly capped and inspected. No exceptions will be allowed.

(b) All building sanitary sewers shall be capped at the property line in an approved manner by the applicant or his contractor and inspected by City personnel prior to closure of the excavation. If future redevelopment of the property line is anticipated, the City may, upon request, allow the building sewer to be capped elsewhere on the property.

(c) It is the applicant's responsibility to ensure that no other structure is connected to the sewer service being abandoned. If the line abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided.

(d) If a sewer service is to be reused, the service line must meet the requirements of **4.210(c)**.

4.217 Abandonment of Septic Tanks. In every instance in which use of a septic tank or cesspool is discontinued upon connection of plumbing facilities to a public or private sewer, the

septic tank or cesspool shall be pumped out and emptied of sewage and sludge and refilled with clean sand or gravel in a manner approved by the City.

4.218-4.219 Reserved for Expansion.

4.220 Extension of Municipal Sanitary Sewer System by Private Developers.

4.221 Extension or Enlargement of Sanitary Sewer Main by Developer. As an alternative to the City constructing an extension to the municipal sanitary sewer system or enlarging a current pipe to provide additional capacity, the City may, under conditions specified in LRC 4.222 to 4.226, permit a developer to make such an extension or enlargement. Developers making enlargements to existing pipes may be required to pay the cost to transfer existing service connections to the enlarged pipe.

4.222 Filing for Preliminary Consent. The Developer shall file a preliminary request with the City to construct a sanitary sewer main extension or enlargement, setting forth generally the proposed size and location of the sanitary sewer main and the purpose for which it is to be constructed. This requirement may be in the form of a land division tentative plan application filed under **LRC 9.210**. After receiving preliminary consent from the City that the proposed extension may be constructed by the Developer under the terms of this section, the Developer may proceed within six months of the consent to file an application with the City

4.223 Application by Developer. A developer, who had received the City's preliminary consent to construct an extension or enlargement to the municipal sanitary sewer system and desires to proceed therewith, shall make application to the City. Such application shall provide the following information:

- (a) Detailed plans and specifications conforming to adopted standards of the City.
- (b) Cost estimates for the project, certified by a qualified professional engineer.
- (c) Legal description and property owner's names and addresses of all property that would be benefited by the project;
- (d) Name of the contractor who shall be doing the project;
- (e) Such other information the City Administrator or City Engineer deems necessary for the approval of the project.

4.224 Apportionment of Costs.

- (a) If the Developer is the only property owner that benefits from the proposed project, the developer shall pay all the costs of the project unless approved otherwise by the City Council.
- (b) If there are other properties, in addition to the Developer's property that benefit from the project, the Developer may chose one of the following options:
 - (1) Agree to pay the entire cost of the project.
 - (2) Enter private agreements with other property owners to pay their share of the cost of the project. The City would not be a party to any such agreements and the final responsibility for paying all costs would rest with the Developer.
 - (3) Request that the City approve a Local Improvement District in accordance with LRC Section 3.020, to allocate the costs of the project. If a Local Improvement District is formed to allocate project costs, that portion of the costs allocated to the Developer will not be financed by the City.

(4) Request that the City approve a Reimbursement District in accordance with **LRC Section 3.060**, to allocate the costs of the project.

(c) Costs, paid by the Developer, attributed solely to enlarging existing sanitary sewer lines to serve new development may, with City Council approval, be allowed as a credit towards System Development Charges for improvement in accordance with **LRC 3.050**.

4.225 Approval by the City. The City Council shall approve or deny the application and apportionment of cost and, if approved, execute an improvement agreement with the Developer. If any portion of the cost of the project is to be paid by the City through a local improvement district or otherwise, the agreement will clearly state the amount to be paid by the City and when payment is due. Upon execution of the agreement, the developer may proceed with the sanitary sewer main extension in accordance with the approved plans and specifications. The Developer shall notify the City when construction commences and the construction shall be completed within one year of the day of the approval. All permits required under City, county and/or state law shall be obtained by the Developer or his contractor prior to starting work.

4.226 Filing Statement of Cost by the Developer. Upon completion of the sanitary sewer main extension project, the Developer shall file with the City an itemized cost statement of the completed improvements. When a Local Improvement District or Reimbursement District has been approved and the total cost shown on said statement exceeds the approved engineer's estimate, the City Council may approve the overage for the purposes of apportioning costs if they are satisfied the overage was due to conditions not readily foreseen at the time of the construction. Any other cost overages will be borne by the Developer.

4.227-4.229 Reserved for Expansion.

4.230 Conditions of Service, Charges, Billing and Collection.

4.231 Application for Sanitary Sewer System. Application for sanitary sewer service is automatic when water service application is made. If application is for sanitary sewer service only, such application shall be made as for water service prescribed in **LRC 4.024**.

4.232 Collection, Billing. Sanitary sewer billing and collection will be in accordance with LRC 4.020 through 4.035. The following additional sanitary sewer service policy is established.

4.233 Discontinuance of Sanitary Sewer Only Accounts for Failure to Pay. For those utility accounts that are sanitary sewer only account, failure to pay by established deadlines may result in the City physically disconnecting and capping the sanitary sewer service connection. All costs associated with physical disconnecting sanitary service, including but not limited to, excavation, public works staff time and administrative costs will be billed to the property owner and must be paid in full before reconnection is permitted. In addition to payment of the above costs, a sanitary sewer connection permit must be obtained and all reconnection work must be accomplished and paid for by the property owner in order for service to be restored. All costs for the City to physically disconnect sanitary sewer will be placed as a lien against the property or turned over to collection agencies if not paid within 30 days of being invoiced.

4.234 Denial of Service. Sanitary service may be denied to any person who has left an unpaid utility bill or other utility charges at another address until such bills and charges are paid.

4.235 Partial Month Service. Partial month service will be prorated daily from the water meter reading date for sanitary sewer service that begins or ends on a date other than the water meter reading date.

4.236 Charges for Sanitary Sewer Service Connections. Normally the City requires all new sanitary sewer service connections to be installed by the property owner after obtaining a service connection permit. The City must inspect the service connection before it is covered. If the property owner requests, the City may construct the service connection and bill the property owner for all actual costs plus a 10% administration fee. If the City constructs the service connection, a cash deposit is required in the full amount of the cost as estimated by the City before work will proceed. If the actual cost is less than the deposit, a refund will be provided. If the actual cost is more, the property owner must pay within 30 days of being invoiced or service will be disconnected.

4.237 Disposition of Funds. All funds derived from the collection of sewer service charges shall be credited to the sewer fund. Funds earned by the sewer fund shall be expended for sewer related administrative expenses; for sewer treatment, operations and maintenance costs; for construction of interceptor sewers, lateral sewers, sewage pumping plants and other collection and transmission facilities; and for the payment of principal and interest of any bonds issued or other debt incurred for the construction of any such sewage facilities.

4.238-4.239 Reserved for Expansion.

4.240 Use of Public Sewers.

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

(b) Storm water shall be discharged to storm sewers and natural outlets under the authority and regulation of the NPDES Stormwater Permit Program, administered by the Oregon DEQ.

(c) When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes or large quantities of discharge shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(d) All measurements, tests and analysis of the characteristics of water wastes to which reference is made in this chapter of the Code shall be determined in accordance with the current edition of the "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association, and shall be determined at the control manhole provided, or upon testing of suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. When customary measurement for BOD characteristics is impractical due to time

constraints and the necessity to have immediate measurable results, mg/1 of BOD may be based on forty-two percent (42%) of measured C.O.D.

(e) Prohibited Discharge Standards.

(1) No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will cause interference or pass through. These general prohibitions apply to all users of the municipal wastewater system whether or not the user is subject to categorical pretreatment standards or any other National, State or local pretreatment standards or requirements. Furthermore, no user may contribute the following substances to the system:

A. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the municipal wastewater system. Included in this prohibition are waste streams with a closed cup flash point of less than 140°F (60°C) using the test methods prescribed in 40 CFR 261.21.

B. Solid or viscous substances in amounts which will obstruct the flow in the municipal wastewater system.

C. Any fat, oils or greases, including but not limited to petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

D. Any wastewater having a pH less than 6.0 or more than 9.0, or which may otherwise cause corrosive structural damage to the municipal wastewater system, City personnel or equipment.

E. Any wastewater containing pollutants in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to pass through or interfere with the municipal wastewater system, any wastewater treatment or sludge process, or constitute a hazard to humans or animals.

F. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

G. Any substance which may cause the treatment plant effluent or any other residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the system cause the City to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other State requirements applicable to the sludge use and disposal practices being used by the City.

H. Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plants effluent thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life.

I. Any wastewater having a temperature greater than 150°F(55°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F(40°C).

J. Any wastewater containing any radioactive waste or isotopes except as specifically approved by the Director in compliance with applicable State Federal regulation

K. Any pollutants which result in the presence of toxic gases, vapor or fumes within the system in a quantity that may cause worker health and safety problems.

L. Any trucked or hauled pollutants.

M. Storm water, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, cooling water and unpolluted industrial wastewater, unless specifically authorized by the Director.

N. Any sludges, screenings, or other residues from the pretreatment of industrial wastes.

O. Any medical wastes, except as specifically authorized by the Director in a wastewater permit.

P. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfered with the municipal wastewater system.

Q. Any material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Director.

R. Any wastewater causing the treatment plant effluent to demonstrate toxicity to test species during a bio-monitoring evaluation.

S. Recognizable portions of the human or animal anatomy.

T. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

(2) Wastes prohibited by this section shall not be processed or stored in such a manner that these wastes could be discharged to the municipal wastewater system.

(f) Federal Categorical Pretreatment Standards.

(1) Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

(2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR .6(e).

(g) State Requirements. Users are required to comply with applicable State pretreatment standards and requirements set out in OAR Chapter 340. These standards and requirements are incorporated herein.

(h) Specific Pollutant Limitations and Local Limitations.

(1) No nonresidential user shall discharge wastewater containing restricted substances into the municipal wastewater system in excess of limitations specified in its Wastewater Discharge Permit or adopted, by resolution, by the City. The City Administrator shall publish and revise, from time to time, standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Chapter. Standards published in accordance with this section will be deemed Pretreatment Standards for the purposes of Section 307(d) of the Act.

(2) At his discretion, the City Administrator may impose mass limitations in addition to or in place of the concentration based limitations referenced above. The more stringent of either the categorical standards or the specific pollutant limitations for a given pollutant will be specified in the Wastewater Discharge Permit.

(3) Specific effluent limits shall not be developed and enforced without individual notices to persons or groups who have requested such notice and an opportunity to respond.

(i) City's Right to Revision. The City reserves the right to establish, by ordinance or in wastewater permit, more stringent limitations or requirements or discharges to the municipal

wastewater system if deemed necessary to comply with the objectives presented in **Section 4.202(a)** or the general or specific prohibitions in **Section 4.240(e)**.

(j) Special Agreement. The City reserves the right to enter into special agreements with users setting out special terms under which the industrial user may discharge to the system. In no case will a special agreement waive compliance with a pretreatment standard. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. Industrial users may also request a variance from the categorical pretreatment standard from the Department of Environmental Quality as the delegated Approval Authority for the State of Oregon. Such a request will be approved only if the user can prove that factors relating to its discharge are fundamentally different from the factors considered by US EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

(k) Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or any other pollutant-specific limitation developed by the City.

(l) Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N.

(m) New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

4.241 Pretreatment of Wastewater.

(a) Pretreatment Facilities.

(1) Industrial users shall provide necessary wastewater treatment as required to comply with this Code and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 4.240(e) above, within the time limitations specified by the City. Any facilities required to pre-treat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility.

(2) The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Code.

(b) Additional Pretreatment Measures.

(1) Whenever deemed necessary, the City may require industrial users to restrict the industrial user's discharge during peak flow periods, designate that certain wastewater be discharge only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the municipal wastewater system and determine the industrial user's compliance with the requirements of this Code.

(2) The reduction of the amount of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW may be obtained by physical, chemical or biological processes, process changes or by other means. (Except where expressly authorized to do so by an applicable

Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement.) Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings which might interfere with or otherwise be incompatible with the POTW. Where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with a combined wastestream formula as outlined in 40 CFR 403.6(e).

(3) Grease, oil and sand interceptors shall be provided when, in the opinion of the City Administrator or Building Official, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City Administrator or Building Official and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner, at his expense.

(4) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

4.242 Accidental Discharges and Spill Prevention Plans.

(a) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this ordinance into the sanitary sewer system. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense.

(b) An accidental spill prevention plan (ASPP) showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility and implementation of procedures. The City shall determine which user is required to develop an ASPP and require said user to submit the ASPP within 60 days after notification by the City. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this section

(c) In the case of an accidental discharge, it is the responsibility of the user to immediately notify the City of the incident by telephone or other means. The notification shall include location of discharge, type of waste, concentration, volume, and corrective actions.

(d) Within five days following an accidental discharge, the user shall submit to the City a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to sewers or to the environment, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Code or other applicable law.

4.243 Tenant Responsibility. Any persons who shall occupy the industrial user's premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of this Code in the same manner as the Owner.

4.244 Separation of Domestic and Industrial Waste Streams. All new and domestic wastewaters from restrooms, showers, drinking fountains, etc., unless specifically included as part of a categorical pretreatment standard, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through a required pretreatment system and the industrial user's monitoring facility. When directed to do so by the Director, industrial users must separate existing domestic waste streams.

4.245 Hauled Wastewater. No septic tank waste or other holding tank or hauled waste shall be discharged into the City's collection system. An exception is allowed for public or private recreational vehicle holding tank dump sites if such dump sites have been approved by the City and pretreatment requirements established by the City have been met.

4.246 Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in **Section 8.132**.

4.247 Discharges to the Storm Drainage System. No person shall cause pollution of any water of the state or cause any wastewater to be placed in a location where such wastewater is likely to escape or be carried into the storm drainage system and by said storm drainage system into the waters of the state.

4.248 Discharges to the Environment.

- (a) No person shall discharge any sewage, domestic or industrial waste, pollutant, or hazardous material to the environment.
- (b) Dischargers shall notify the City immediately upon discharging material in violation of this or other applicable City ordinances to enable countermeasures to be taken to minimize damage to the environment. Notification of the City does not absolve the discharger of their responsibility to notify state and federal agencies under state and federal programs.
- (c) Above ground chemical tanks shall be protected by approved methods to prevent accidental discharge to sewers or the environment. All below ground tanks shall be installed in accordance with ORS Chapter 539.
- (d) When dikes or impounding basins are used to contain chemicals, impervious materials shall be used to provide a liquid tight enclosure.
- (e) The party responsible for the discharge of hazardous materials or pollutants to the environment shall be responsible for all clean up costs. The City's costs during the emergency for identification, hazard assessment, and containment will also be reimbursed.
- (f) The City may require clean up at such incidents as:
 - (1) Illegal disposal of hazardous materials or pollutants.
 - (2) Improper handling of hazardous materials or pollutants at any site.
 - (3) Spills of hazardous materials or pollutants to the environment.
 - (4) Discharge of hazardous materials or pollutants during a fire or other accident.
- (g) In general, reimbursement costs are those incident costs that are eligible, reasonable, necessary, and allocable to the incident. Costs allowable for reimbursement may include, but are not limited to (hereafter referred to as the response):
 - (1) Disposable materials and supplies provided, consumed, and expended specifically for the purpose of the response for which reimbursement is being requested.

- (2) Compensation of the employees or contractors for the time and efforts devoted specifically to the response.
- (3) Rental or leasing of equipment used specifically for the response.
- (4) Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair.
- (5) Decontamination of equipment that was used during the response.
- (6) Special technical service specifically required for the response.
- (7) Other special services specifically required for the response.
- (8) Laboratory costs for the purpose of analyzing samples taken during the response.

4.249 Connections Prohibited. Any direct or indirect connection or entry point for persistent, deleterious or hazardous waste or material to the user's plumbing and into the sanitary sewer system shall be prohibited

4.250 Compliance.

4.251 Compliance Schedule.

(a) Following a release to the environment, the City may require the discharger to submit a compliance schedule. This schedule will be a detailed outline of actions to be taken to correct, clean, mediate, or restore the environment, structures, or property harmed by the release. The schedule will also address measures to prevent recurrence of the problem. The following conditions shall apply to this schedule:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the user meeting applicable standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction).

(2) No increment referred to in paragraph (1) shall exceed nine months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the City.

(4) Any other information as may be deemed by the city to be necessary to evaluate the schedule.

(b) The schedule shall be signed by an executive officer and, when required by the City, a qualified engineer, where applicable.

(c) Within 30 days after full evaluation and acceptance of the data furnished, the City shall notify the user of the City's acceptance or rejection thereof.

(d) The discharger shall be responsible for all costs to the City to contract review of the schedule and compliance with this Section.

4.252 Harmful Discharges.

(a) The City may suspend the sanitary sewer service when such suspension is necessary, in the opinion of the City Administrator, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial threat to the health or welfare of persons, or to the environment.

(b) Any person notified of a suspension of the service shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the Administrator shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the sewer system or endangerment to any individual or the environment. The Administrator shall reinstate the service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful discharge and the measures taken to prevent any future occurrence shall be submitted to the City Administrator within 5 days of the date of occurrence.

4.253-4.259 Reserved for Expansion.

4.260 Violations.

4.261 Issuance of Cease and Desist Orders.

(a) When the City finds that a spill or discharge has taken place, or is threatening to take place, in violation of prohibitions or limitations of this ordinance, the City may issue an order to cease and desist, and direct that those persons not complying with such prohibitions, limits, requirements, or provisions to:

(1) Comply forthwith; or

(2) Comply in accordance with a time schedule set forth by the City.

(b) When the affected user fails to comply with an order to cease and desist, the City may, when a violation is occurring or has a high probability of occurring, enter the premise and block the flow of drainage waste or turn off at the meter all affected City water. Whenever a premise has been disconnected from the City's water or sewerage system for a violation hereof, reconnection of said premise shall be in accordance with City regulations.

4.262 Appeals.

(a) Any user affected by any decision, action, or determination, including cease and desist orders, made by the City, interpreting or implementing the provisions of this chapter, may file with the City Administrator a written request for reconsideration within ten days of such decision, action, or determination setting forth in detail the facts supporting the user's request for reconsideration. If the ruling made by the Administrator is unsatisfactory to the person requesting reconsideration, the user may, within ten days after notification of the Administrator's decision, file a written appeal to the City Council. The Council shall, within 30 days after receipt of said written notice of appeal, upon proper notice hold a hearing to make a final determination of the issue submitted.

(b) The Administrator's decision, action, or determination shall remain in effect during such period of reconsideration.

4.263-4.272 Reserved for Expansion.

4.273 Penalties.

(a) Violations of Sections 4.240 through 4.249 constitute a Class A violation. Each day the violation continues constitutes a separate offense.

(b) Violations of Section 4.204 through 4.239 constitute a Class B violation. Each day the violation continues constitutes a separate offense.

End of Title Four

**TITLE FIVE
PUBLIC PROTECTION**

GENERAL AND SPECIFIC OFFENSES

5.000 Offenses, General. Unless otherwise indicated elsewhere in this Section, Section 5.000 through Section 5.052 of this Code is adopted by Ordinance 264.

5.001 Criminal Code of Oregon Adopted. The City of Lowell will enforce the Criminal Code of the State of Oregon within the incorporated boundaries of the City and cite offenders into the appropriate courts having jurisdiction over the cited offense. Penalties for violations of the Criminal Code of the State of Oregon will be as prescribed in the Criminal Code.

5.002-5.009 Reserved for Expansion.

5.010 Offenses, Specific.

5.011 Relating to Fire Control. No person shall:

- (a) Intentionally give a false alarm or aid and abet another in giving a false alarm of a fire and/or medical emergency.
- (b) Drive a vehicle over or upon any fire hose, or otherwise disturb or injure in any manner any hose, engine, appliance or apparatus belonging to or used by the Fire District.
- (c) Refuse or fail to promptly obey an order of a member of the Fire District or other emergency response organization, or otherwise obstruct or hinder actions of emergency response personnel during a fire or other emergency.
- (d) Unfasten, open, draw water from, or otherwise tamper with a fire hydrant without the prior permission of the Fire District or City.

5.012 Vagrancy. Except as allowed by LRC Section 5.244, it shall be unlawful for any person to lodge or sleep in or upon any city or county street, alley, City park, parking lot, or any other public place; or to lodge or sleep in any, shed, shop, warehouse, automobile, vessel, or place other than those used for lodging purposes, without the permission of the owner or party entitled to possession thereof.

5.013 Public Property; Defacing or Injuring. It shall be unlawful for any person to:

- (a) Deface or injure any public property, or
- (b) To remove any part of any tree, fence, gate, or building from public property, or
- (c) To place any sign, card, bill, mark or paint upon public property.

5.014 Garage Sale Limitation.

(a) For the purposes of this section, the term “garage sale” shall mean the public sale of new or used goods within the corporate limits of the City of Lowell by any individual or group of individuals from any private property, including but not limited to garages, porches, carports, yards, when said individual or group of individuals is not in the business of selling such goods or not licensed as a secondhand dealer, junk dealer or when the property from which such sale is to be conducted is not within a zone permitting and being used for commercial business or otherwise permitted under provisions of this code. The offering for sale of one item by public display with a sign indicating the item is for sale, and sale of more than one individual item not

offered by public display and where no signs are posted concerning a sale or place of sale are transactions exempt from provisions of this section.

(b) It shall be unlawful to conduct within the City more than four garage sales upon the same property in any calendar year, each of said sales to extend no longer than three days.

(c) Signs advertising the time and location of a garage sale may be placed in the public right-of-way with the following restrictions.

(1) Signs must be no larger than 24 inches by 36 inches.

(2) Signs must be placed on a free standing stake or stand, well clear of vehicle movement areas.

(3) Signs must be placed no earlier than five (5) days before the date of the garage sale and removed within 24 hours of completion of the garage sale.

(4) Signs must be placed in a manner so as not to impact vision clearance at street intersections and private driveways.

(d) Signs advertising the time and location of a garage sale may only be placed on private property with the permission of the property owner, occupant or person otherwise having legal control over the property.

5.015 Iceboxes, Refrigerators and other Containers. It shall be unlawful for any person to place, leave or maintain in areas readily accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container of any kind which has an air-tight door without first removing the door.

5.016-5.018 Reserved for Expansion.

5.019 Penalty. Violations of LRC Sections 5.011 through 5.018 are established as Class C violations.

5.020 Curfew.

5.021 Minors Nighttime Curfew.

(a) No minor under the age of 18 years shall be in or upon any street, highway, park, alley, or other public place between the hours specified in subsection (b) of this section unless:

(1) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor; or

(2) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during the hours specified; or

(3) The minor is lawfully emancipated pursuant to Oregon Revised Statutes

(b) The curfew is shall be between the hours of 12:00 midnight and 5:00 a.m.

5.022 Parental Responsibility.

(a) No parent, guardian, or person having care and custody of a minor under the age of 18 years shall knowingly allow such minor to be in or upon any street, highway, park, alley, or other public place between the hours specified in **LRC 5.021**, except as otherwise provided in that section.

(b) It shall be unlawful and shall be considered a separate offense for any parent, guardian, or any other adult person having the legal care and custody of any person under the age of 18 years to refuse to take the minor person under his or her care into his or her immediate physical custody upon being notified to do so by the police department.

5.023 Enforcement. Any police officer or any other law enforcement officer is hereby authorized and empowered to take charge of any person under the age of 18 years violating the provisions of **LRC 5.021** and it shall be the duty of any such officer taking charge of any such person to thereafter cause to be notified the parent or guardian of such person of such violation and advise the parent or guardian the location that such person will be held in the police custody. The officer, at his or her discretion, may elect to deliver the minor to the minor's residence.

5.024 Penalty. Violations of LRC 5.021 through 5.022 is established as a Class D violation. Each occurrence is a separate violation.

5.025–5.029 Reserved for Expansion.

5.030 Littering and Handbills.

5.031 Definitions. For the purposes of this section, the following definitions apply:

(a) "Litter" means metal, cans, glass, bottles, plastics, wood, nails tacks, cardboard, paper, leather or any sort of garbage, rubbish, refuse, trash, or debris.

(b) "Public place" means public rights-of-way, roads, streets, alleys, lanes, trails, parks, recreational and transportation facilities, and any area or structure owned, operated or maintained by the City.

(c) "Handbill" is any printed or written matter, sample, device, circular, leaflet, flyer, pamphlet, booklet, or other literature used for the purpose of advertising, announcing, or otherwise making known any product, commodity, service, business, meeting, sale or event of any kind.

5.032 Littering in Public Places. It shall be unlawful for any person to throw, scatter, or deposit any litter in or upon any public place.

5.033 Litter on Private Property. Property owners, tenants and/or those otherwise using or occupying private property shall not allow litter to blow or otherwise migrate from private property to a public place.

5.034 Debris from Hauling.

(a) No person shall haul sand, gravel, rock, wood, mud or solid waste in a manner that allows the sand, gravel, rock, wood, mud or solid waste to fall on the public streets of the City.

(b) No person shall drive or move any vehicle or truck within the city, the wheels, tires or frame of which carry onto and deposit in any street, alley or other public place, mud, dirt or rocks.

(c) No person shall drive or move any vehicle or truck within the city which leaks liquid material, including muddy water, onto any street, alley or other public place.

5.035 Fastening Handbills to Public Property. Except as provided elsewhere in this code, it shall be unlawful for any person, except for a public officer or employee in the performance of a public duty, to stick, stamp, paint, paste, nail, tack, or otherwise fasten any handbill of any kind, or cause the same to be done, on any sidewalk, crosswalk, curb, pavement, lamppost, pole, hydrant, bridge, tree or other location upon public property of the City. Signs authorized elsewhere in this code and placed on a free standing stake or stand are exempt from this section.

5.036 Trash Receptacles Required. Each retail business in the City of Lowell which sells food or drink shall provide and maintain a covered 50 gallon trash receptacle or two covered 30 gallon trash receptacles on their premises for use by their customers. Required trash receptacles shall be placed outside the building in a location clearly visible from the main customer exit and shall be maintained in a safe and sanitary condition and emptied when full or once a week, whichever is more often.

5.037-5.038 Reserved for Expansion.

5.039 Penalty. Violation of LRC 5.031 through 5.038 are established as Class C violations.

5.040 Graffiti.

5.041 Definitions.

(a) "Graffiti" means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the prior authorization of the owner, occupant or other person exercising legal authority over the property regardless of the graffiti content, or nature of material used in the commission of the act, or the material of the property.

(b) "Graffiti Nuisance Property" means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, from any other public or private property or from any premises open to the public, and if the graffiti has not been removed within the time provided in **LRC 5.043**.

5.042 Graffiti Prohibited.

(a) It shall be unlawful for any person to apply graffiti.

(b) It shall be unlawful for any person to solicit or command another person to apply graffiti.

(c) It shall be unlawful for any person to aid or abet or agree to aid or abet another person to plan to apply or apply graffiti.

5.043 Graffiti Removal.

(a) It shall be the responsibility of the property owner, occupant and/or other person exercising legal authority over the property to remove graffiti placed on the property.

(b) Graffiti must be removed within 48 hours of receipt of written or verbal notice by a police officer or employee of the City to remove the graffiti.

5.044 Penalties.

(a) Violation of LRC 5.042 is established as a Class A violation. In addition, the Municipal Court may order restitution for the actual cost to remove the graffiti.

(b) Violation of LRC 5.043 is established as a Class C violation.

5.045-5.049 Reserved for Expansion.

5.050 Smoking in City Owned Buildings.

5.051 Oregon Indoor Clean Air Act Adopted. The City of Lowell hereby adopts the Oregon Indoor Clean Air Act and applies said Act to all buildings owned or operated by the City of Lowell.

5.052 Act Defined. The Oregon Indoor Clean Air Act for purpose of this Code Section is defined by Oregon Revised Statutes 433.835 through 433.990. Where references to the State of Oregon or the Oregon Health Division apply in the Oregon Revised Statutes listed above, the term City of Lowell shall be substituted.

5.053-5.099 Reserved for Expansion.

NUISANCES

5.100 Nuisances, General. Sections 5.100 through 5.128, pertaining to nuisances and noxious vegetation are adopted by Ordinance 256 unless otherwise indicated.

5.101 Definitions. For purposes of Sections 5.100 through 5.128, the following mean:

(a) Person in charge of property. An agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.

(b) Person responsible. The person responsible for abating a nuisance is:

(1) The owner; and

(2) The person in charge of the property, as defined in this subsection; and

(3) The person who caused a nuisance, as defined in this section or another code provision or ordinance of the city, to come into or continue in existence.

(c) Public place. A building, way, place of accommodation, publicly or privately owned, open and available to the general public.

5.102 Animal Nuisances.

(a) Communicable Disease. No person shall permit an animal or bird owned or controlled by him to be at large within the city if the animal or bird is afflicted with a communicable disease.

(b) Domestic Animals, Livestock, Poultry, and Bees. No person shall, except as allowed for in the Lowell Land Development Code:

(1) Maintain a pigsty, slaughterhouse, or tannery, or permit domestic animals, livestock or poultry owned by him to run at large within the city.

(2) Keep a stand or hive of bees on any property within 20 feet of the boundary line of the premises.

(3) Stake or picket any animal in or upon any of the streets, alleys, or public places of the City, or stake or picket an animal so that it may go or graze upon a public right-of-way or the property of another, unless with the consent of the owner or occupant of the other property.

(c) Removal of Carcasses. No person shall permit a fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

5.103 Nuisances Affecting Public Health. No person shall cause or permit the following:

(a) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with State Health Division regulations.

(b) Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time and that may affect the health of the City.

(c) Stagnant water that affords a breeding place for mosquitoes and other insect pests.

- (d) Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.
- (e) Decayed or spoiled food.
- (f) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- (g) Drainage of liquid wastes from private premises.
- (h) Cesspools, septic tanks or septic drainfields that are in an unsanitary, unsafe or malfunctioning condition or that cause an offensive odor.
- (i) Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system or allowed to be introduced into a storm drain or open drainage ditch.

5.104 Nuisances Affecting Public Safety.

(a) Creating a Hazard. No person shall:

(1) Maintain or leave, in a place accessible to children, a container with a compartment of more than one and one-half cubic feet capacity with a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside.

(2) Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation, or other hole of a depth of four feet or more, and a top width of 12 inches or more, fail to cover or fence it with a suitable protective construction.

(b) Attractive Nuisances.

(1) No owner or person in charge of property shall permit on the property:

A. Unguarded machinery, equipment, vacant buildings or other devices that are attractive, dangerous, and accessible to children.

B. Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous, and accessible to children.

(2) This section does not apply to authorized construction projects with reasonable safeguards to prevent injury or death.

(c) Scattering Rubbish. No person shall deposit, on public or private property, rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal or vehicle traveling on a public way.

(d) Trees.

(1) No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic. An owner or person in charge of property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining right-of-way, trimmed so that any overhanging portions are at least eight feet above the sidewalk and at least 14 feet above the roadway.

(2) No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near the property.

(e) Surface Waters, Drainage.

(1) No owner or person in charge of a building or structure shall permit rainwater, ice, or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk or street.

(2) The owner or person in charge of property shall install, and maintain in a proper state of repair, adequate drainpipes or a drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk or street.

(f) Defective Sidewalks; Snow and Ice.

(1) No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk, shall permit:

A. Snow to remain on the sidewalk.

B. Ice to remain on the sidewalk unless the ice is covered with sand, ashes or other suitable material to assure safe travel.

(2) No owner of property, improved or unimproved, abutting on a public sidewalk, shall permit the sidewalk to deteriorate to such a condition that, because of cracks, chipping, weeds, settling, covering by dirt, or other similar occurrences, the sidewalk becomes a hazard to persons using it.

(3) The city shall not be liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks, public or private, caused by ice, snow, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt, or other similar conditions. Owners of abutting property shall maintain sidewalks free from such conditions and are liable for any and all injuries to persons or property arising as a result of their failure to so maintain the sidewalks.

5.105 Nuisances Affecting Public Peace.

(a) Radio and Television Interference.

(1) No person shall operate or use an electrical, mechanical, or other device, apparatus, instrument, or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

(2) This section does not apply to devices licensed, approved, and operated under the rules and regulations of the Federal Communications Commission.

(b) Junk.

(1) No person shall, for more than seven days, keep junk outdoors within public view on a street, lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

(2) The term "junk" as used in this subsection, includes, but is not limited to, old motor vehicle parts, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material.

(3) This section does not apply to junk kept in a licensed junk yard or automobile wrecking yard.

(c) Discarded Vehicles.

(1) A discarded vehicle shall mean any vehicle which is in one or more of the following conditions: Inoperative, Wrecked, Dismantled, or Partially Dismantled. Discarded vehicles may be deemed to include major parts thereof including, but not limited to bodies, engines, transmissions and running gear.

(2) No person shall store or permit the storing of a discarded vehicle on any private property for more than 72 hours, unless it is completely enclosed within a building or in a space entirely enclosed by a solid fence, hedge or screen, not less than six feet in height, or unless it is in connection with a business enterprise dealing in junked vehicles lawfully conducted within the City.

(d) Exterior Lighting.

(1) No person shall permit direct light glare beyond the property of origin, when perceptible without instruments on neighboring residentially zoned property and when the direct light glare causes distress or discomfort to the residents of the property.

(2) Temporary lighting used for emergency purposes are exempt from the provisions of this section.

5.106-5.108 Reserved for Expansion.

5.109 Unenumerated Nuisances.

(a) The acts, conditions or objects specifically enumerated and defined in sections 5.102 to 5.108 are declared public nuisances and may be abated by the procedures set forth in section 5.110.

(b) In addition to the nuisances specifically enumerated in sections 5.102 to 5.108, every other thing, substance, or act that is determined by the Council to be injurious or detrimental to the public health, safety, or welfare of the city may be declared a nuisance and may be abated as provided in section 5.110.

5.110 Abatement Procedures.

5.111 Notice to Abate.

(a) On determination by the City Administrator that a nuisance exists, the City Administrator shall cause a notice to be mailed by first class mail to the occupant of the property directing the person responsible to abate the nuisance. If said notice comes back as undeliverable said notice shall be posted on the premises or at the site of the nuisance.

(b) The notice shall also be mailed to the property owner of record if different from the occupant.

(c) The notice to abate shall contain:

(1) A description of the real property, by street address or otherwise, on which the nuisance exists.

(2) A direction to abate the nuisance within 10 days from the date the notice was postmarked or posted.

(3) A description of the nuisance.

(4) A statement that failure to remove a nuisance may result in a fine against the person responsible.

(5) A statement that, if the nuisance is not removed, the City may also abate the nuisance and the cost of abatement will be charged to the person responsible and/or cite to person responsible.

(6) A statement that the person responsible may protest the order to abate by giving written notice to the City Administrator within 10 days from the date the notice was postmarked or posted.

(7) A statement that the cost of abatement will be assessed to and may become a lien on the property if not paid.

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

(e) Nothing in this section is intended to prohibit the City Administrator or other City official from providing an informal notice of a violation, either orally or in writing, to the person responsible.

5.112 Abatement by the Person Responsible.

(a) Within 10 days after the mailing or posting of notice, the person responsible shall remove the nuisance or file a protest, as described in (b) below.

(b) A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the City Administrator.

(c) The statement shall be referred to the Council as a part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council. The Council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the Council. Council determination shall be required only in cases where a written statement has been filed as provided.

(d) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 10 days after the Council determination.

5.113 Joint Responsibility. If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

5.114 Abatement by the City.

(a) If the nuisance has not been abated by the person responsible within the time allowed, the Council may, by Resolution of the City Council, cause the nuisance to be abated.

(b) The City staff or person contracted by the City responsible for abatement of the nuisance shall have the right to enter into or upon property at reasonable times to cause the removal of a nuisance.

(c) The City Administrator shall keep an accurate record of the expenses incurred by the City in physically abating the nuisance and shall include a charge equal to \$25.00 or 20 percent of those expenses, whichever is greater, for administrative costs.

5.115 Assessment of Costs.

(a) The City Administrator shall forward to the person responsible a notice stating:

(1) The total cost of abatement, including the administrative costs.

(2) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(3) That if the person responsible objects to the cost of the abatement as indicated, an appeal may be filed with the City Administrator not more than 10 days from the date of the notice.

(b) No later than 30 days after the date of the appeal, the Council, in the regular course of business, shall hear and make a decision on the objections to the costs assessed.

(c) If the costs of the abatement are not paid within 30 days from the date of the notice of assessment or decision by the Council of an appeal, a lien, adopted by Resolution of the City Council, shall be placed on the property where the abatement occurred.

(d) An error in the name of the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

5.116 Summary Abatement. The procedure provided in Sections 5.110 through 5.115 is not exclusive, but is in addition to procedure provided by other code provisions or State law. Any city official or law enforcement officer may proceed summarily to abate a health or other nuisance that unmistakably exists and that imminently endangers human life or property.

5.117-5.118 Reserved for Expansion.

5.119 Penalties.

(a) A violation of a provision of Sections 5.102 to 5.109 is a Class B violation and may be cited as such if a nuisance is not removed within 10 days of the date of the Notice of Violation. Each additional day the nuisance is not removed may be a separate violation.

(b) The abatement of a nuisance is not a penalty for violation of Sections 5.102 through 5.109, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.

5.120 Noxious Vegetation.

5.121 Definitions. For purposes of Section 5.120, except where the context indicates otherwise, noxious vegetation is defined as the following:

(a) Poison oak.

(b) Poison ivy.

(c) Blackberry bushes that extend into a public thoroughfare or across a property line.

(d) Vegetation that is:

(1) A health hazard,

(2) A fire hazard,

(3) A traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.

(e) Weeds or grass more than 12 inches high.

(f) Weeds or grass going to seed.

(g) Noxious vegetation does not include an agricultural crop, unless that crop is a health, traffic, or fire hazard.

5.122 Owner Responsibility. No owner or person in charge of property may allow noxious vegetation to be on his property or on the public right-of-way abutting his property. It shall be the duty of an owner or person in charge of property to cut down or to destroy noxious vegetation. Exception: For parcels one acre or larger in size, noxious vegetation need only be controlled for a distance of 20 feet from an adjoining property where development has occurred and is not required to be controlled adjoining undeveloped property unless specifically requested by the owner of the undeveloped property.

5.123 Public Notice of Intent to Abate. The City Administrator will publish in the April edition of The Bridge or in a newspaper of general circulation after April 1st of each year a notice containing a copy of Section 5.122. The notice shall also state that the City intends to abate noxious vegetation within not less than 10 days of a final notice to abate such vegetation sent to the property owner and that all costs of doing so will be charged to the owner of the property being abated. The notice shall also state that a citation may be issued in lieu of or in addition to abatement action.

5.124 Notice to Abate.

(a) Upon determination by the City Administrator that noxious vegetation exists on any property, the City Administrator shall cause a notice to be mailed by first class mail to the person in charge and to the property owner of record of the property, if different, where the noxious vegetation exists, directing the owner or person in charge of the property to abate the noxious vegetation.

(b) The notice to abate shall contain:

(1) A description of the real property, by street address or otherwise, on which or adjacent to which the noxious vegetation exists.

(2) A direction to abate the noxious vegetation within ten days from the date of the notice.

(3) A statement that unless the noxious vegetation is removed, the City will issue a citation and may abate the noxious vegetation and the cost of abatement may be placed as a lien against the property until paid in full.

(4) A statement that the owner or person in charge of the property may protest the abatement by giving notice to the City Administrator within seven days from the date of the notice.

(c) An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or other person shall not make the notice void.

5.125 Abatement by the Owner.

(a) Within the time allowed by the notice as provided in section 5.124, the owner or person in charge of the property shall remove the noxious vegetation or show that no noxious vegetation exists.

(b) The owner or person in charge of property may protest that no noxious vegetation in fact exists by filing with the City Administrator, within seven day of the date of the notice, a written statement which shall specify the basis for so protesting.

(c) The statement shall be referred to the Council as a part of the Council's regular agenda at the next available meeting. At the time set for the consideration of the abatement, the owner or other person may appear and be heard by the Council. The Council shall determine whether or not noxious vegetation in fact exists and such determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement has been filed.

(d) If the Council determines that noxious vegetation does in fact exist, the owner or person in charge of property shall, within five days after the Council determination, abate the noxious vegetation.

5.126 Abatement by the City.

(a) If, within the time permitted by Section 5.124 or 5.125, the noxious vegetation has not been abated by the owner or person in charge of the property, the City Administrator may cause the noxious vegetation to be abated.

(b) The city employee or contractor personnel charged with abatement shall have the right to enter into or upon any property at reasonable times to investigate or cause the removal of the noxious vegetation.

(c) The charge for abatement shall be the actual cost to abate the property plus administrative fees for processing abatement actions in the amount of \$25.00 or 20% of the actual cost to abate, whichever is greater.

5.127 Assessment of Costs.

(a) The City Administrator shall forward to the owner or person in charge of the property a notice stating:

(1) The total amount of the cost of abatement.

(2) That the amount as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(3) That the Council, in the regular course of business, shall hear objections to the cost to be assessed if such objections are made in writing to the City Administrator within 10 days of the notice of assessments being mailed.

(b) If the cost of the assessment is not paid within 30 days from the date of the notice, a lien, adopted by Resolution of the City Council, in the total amount of the assessed costs shall be placed on the property.

(c) An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void.

5.128 Penalties.

(a) A violation of a provision of Sections 5.120 to 5.127 is a Class C violation and may be cited as such if noxious vegetation is not removed within 10 days of the date of the Notice of Violation. Each additional day the nuisance is not removed may be a separate violation.

(b) The abatement of a nuisance is not a penalty for violation of Sections 5.120 through 5.129, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the noxious vegetation.

5.129 Reserved for Expansion.

NOISE

5.130 Regulation Noise. Sections 5.131 through 5.134 are adopted by Ordinance 141 unless specified otherwise.

5.131 Definitions.

(a) Noise disturbance means any sound which:

- (1) Injures or endangers the safety or health of a human;
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

(b) Plainly audible means where the listener clearly can hear the contents of the sound produced by the noise source. Sounds which may be clearly audible include, but are not limited to, musical rhythms, spoken words, vocal sounds, and engine noises.

5.132. It shall be unlawful for any person to intentionally or recklessly create or continue any noise disturbance.

5.133. The following acts are declared to be noise disturbances in violation of this section but the enumeration shall not be construed to be exclusive:

(a) Keeping of any animal which frequently or for a long duration makes vocal or other sounds which create a noise disturbance.

(b) The using or operating of a vehicle or engine, either stationary or moving, so as to create a loud or unnecessary grating, grinding, rattling, or other noise.

(c) Except for emergency vehicles, the idling of a vehicle's engine between the hours of 10:00 P.M. and 7:00 A.M.

(d) The sounding of any horn or signaling device on any vehicle on any street or public or private place, except as a necessary warning of danger.

- (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of danger, or upon request of proper city authorities.
- (f) The using of any mechanical device operated by compressed air, steam or otherwise, unless effectively muffled.
- (g) The erecting (which includes excavation, demolition, alteration or repair) of any premises in residential districts, other than between the hours of 7:00 A.M. and 10:00 P.M., except in case of urgent necessity in the interest of the public welfare and safety, and then only with a permit granted by the City Recorder for a period not to exceed 10 days. Such permit may be renewed for periods of five days while such emergency continues to exist. Provided further, that if the City Recorder shall determine that the public health, safety and welfare will not be impaired by the erection of any premises between the hours of 10:00 P.M. and 7:00 A.M. and if he/she shall further determine that loss or inconvenience would result to any person unless such work were permitted within those hours he/she may grant permission for such work to be done within the hours of 10:00 P.M. to 7:00 A.M. upon application therefore being made at the time the permit for the work is awarded or during the progress of the work.
- (h) The using of any gong or siren upon any vehicle, other than police, fire, or other emergency vehicle.
- (i) The creating of a noise disturbance on any street adjacent to any school, institution of learning, church or court of justice while the same are in use, or adjacent to any hospital or institution for the care of the sick or infirm, which is plainly audible within the hospital or institution.
- (j) The discharging in open air of the exhaust of any steam engine, internal combustion engine, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke.
- (k) The operating of or permitting the use or operation of any device designed for sound production amplification or reproduction, including but not limited to, radio, musical instrument, phonograph, television set, tape recorder, loud speaker or similar device which creates a noise disturbance or any sound amplifying device; provided however, that upon application to the council, permits may be granted to responsible persons or organizations for broadcast or amplification of programs of music, news speeches, or general entertainment as part of a national, state or city event, public festivals or outstanding events of a noncommercial nature, provided that such broadcast or amplification shall not be audible for a distance of more than 500 feet from the instrument, speaker or amplifier, and in no event shall a permit be granted where the obstruction to the free and uninterrupted traffic, both vehicular and pedestrian will result; with the exemption of the local fire department.
- (l) The conducting, operating or maintaining of any garage within 100 feet of any private residence, apartment, rooming house or hotel in such a manner as to cause a noise disturbance between the hours of 10:00 P.M. and 7:00 A.M.

5.134 Penalty. Any person who violates this ordinance shall upon conviction thereof be punished by a fine up to but not exceeding \$250.00.

5.135-5.199 Reserved for Expansion.

ANIMAL CONTROL

5.200 Animal Control. The following sections are enacted to regulate domestic animals within the City of Lowell, to protect the public from animal related injuries and nuisances, establish requirements and responsibilities related to ownership of domestic animals, and to protect domestic animals from abuse and unwarranted harm and may be cited as the City of Lowell Animal Control Code. (Sections 5.200 through 5.207 are adopted by Ordinance 247 unless specified otherwise.)

5.201 Lane County Animal Control Code Adopted. The City of Lowell hereby adopts Lane County Animal Control Regulations contained in Lane Code, Chapter 7, excluding Section 7.088, except as modified in LRC 5.202 through 5.219. A copy of Lane Code, Chapter 7, shall be maintained on file at Lowell City Hall.

5.202 Delegation of Enforcement Authority. The Lowell City Council hereby delegates authority for enforcement of the Lowell Animal Control Code and State law applicable to the City of Lowell to the Lane County Animal Regulation Authority (LCARA) through established County Code, LCARA policy and procedures and/or requirements established by agreement between the City of Lowell and the LCARA. Enforcement authority also rests with the Lowell City Administrator and Law Enforcement Officers under contract to and sworn by the City of Lowell or Lane County. City of Lowell enforcement officers are granted the same authority as is granted an Animal Control Officer by Lane Code, Chapter 7.

5.203 Court Jurisdiction. LCARA is authorized to cite offenders into the appropriate County Court and retain fine payments consistent with County Policy. Citations issued by the City of Lowell staff, including contracted Law Enforcement Officers, will be cited into Lowell Municipal Court with fine payments retained in accordance with City Policy and State Law.

5.204 Fees Established. The City of Lowell hereby adopts all fees and charges established by the Lane County Board of Commissioners for animal control services.

5.205 Fee Receipts. All receipts for fees collected by LCARA in connection with the Animal Control Code shall be retained by LCARA and receipts for fees collected by the City of Lowell shall be retained by the City of Lowell, consistent with terms of any agreement between the City and LCARA.

5.206 Dog Licenses. The City of Lowell shall issue dog licenses in accordance with Lane Code 7.070 and consistent with any agreement between the City of Lowell and LCARA.

5.207 Selling, Trading, Bartering or Giving Away Animals in Certain Locations Prohibited.

- (a) No person shall sell, trade, barter or give or offer to give away any animal to another person in a City park, or other property owned by the City of Lowell.
- (b) A violation of this section is a Class B violation.

5.208-5.219 Reserved for Expansion.

CAT CONTROL

5.220 Control of Cats. The following sections are enacted to regulate cats within the City of Lowell, to protect the public from cat related nuisances, establish requirements and responsibilities related to ownership of cats, and to protect cats from abuse and unwarranted harm and may be cited as a part of the City of Lowell Animal Control Code. (Sections 5.220 through 5.231 adopted by Ordinance 248 unless specified otherwise.)

5.221 Applicability of Basic Animal Control Code. Those portions of LRC 5.200 through 5.219 and Lane Code, Chapter 7, adopted by LRC 5.201, applicable to animals in general shall be applicable to cats.

5.222 Delegation of Enforcement Authority and Jurisdiction. Enforcement Authority and Jurisdiction established in LRC 5.202 and 5.203, respectively, apply to LRC 5.220 through 5.239.

5.223 Fees Established. The City of Lowell hereby adopts all fees established by Lane County Board of Commissioners for animal control services relating to cats unless adopted separately by City of Lowell resolution. Fees for cat control services not established by Lane County shall be adopted by Resolution of the City of Lowell.

5.224 Fee Receipts. All receipts for fees collected by LCARA in connection with the LRC 5.220 through 5.239 shall be retained by LCARA and receipts for fees collected by the City of Lowell shall be retained by the City of Lowell, consistent with terms of any agreement between the City and LCARA.

5.225 Cat Owner Defined. The definition of “Dog Owner” contained in Lane Code 7.005, Definitions, shall apply equally to cats.

5.226 Cats at Large.

(a) Cats may be allowed to roam at large within the City of Lowell if they do not create a nuisance, health hazard or danger to other domestic animals. Cats allowed to roam at large within the City of Lowell must be certified as being incapable of reproducing by a licensed veterinarian, have a current rabies vaccination certificate and be registered with the City of Lowell.

(b) Cats allowed to roam at large must not kill, menace or otherwise endanger other domestic animals and fowl or be flea ridden, ill or injured.

(c) Owners of cats found to be in violation of this section, shall have committed a Class B violation.

5.227 Capture of Cats at Large by Private Property Owners.

(a) Private property owners may capture, in a recognized humane manner, any cat that is found on their property which meets one of the following conditions:

(1) Is taking up residence on the property. This is evidenced by continually returning after being repeatedly chased away.

(2) Is killing, menacing or otherwise endangering other domestic animals and fowl housed on the property.

(3) Appear to be flea ridden, malnourished, sick, injured or otherwise a health hazard for humans and other animals.

(b) Such property owners may detain a captured cat no longer than 72 hours and during that period of time, must attempt to contact the registered owner if a registration tag is displayed on the cat and can be read. Contact information for owners of registered cats will be made available at Lowell City Hall and LCARA.

(c) If no registration tag is displayed on the cat, the property owner detaining the cat must transport the cat to LCARA to be impounded. If the cat delivered to LCARA does not have microchip identification, the property owner delivering the cat must pay any impoundment fee established by the County, unless they have first received a voucher at City Hall authorizing LCARA to bill the City for a portion of the impound fee. The availability and amount of such vouchers is at the discretion of the City Administrator and is conditional upon the amount of animal control funding available in the annual budget. If the property owner does not agree to pay all or a voucher reduced portion of the impoundment fee, the cat must be released in accordance with (d) below.

(d) If the cat is not returned to its owner or delivered and accepted by LCARA for impound, the cat must be released no further than 100 feet from the property on which it was captured. Under no circumstances shall a captured cat be transported and released elsewhere.

(e) Notwithstanding (b) through (d) above, if a spayed/neutered feral cat, identified by a clipped right ear, is captured, such cat may be released to any person registered with the City as willing to accept responsibility for such cats. Property owners may contact Lowell City Hall to obtain contact information for such persons.

(f) Cats at large on public property, including all street and alley rights-of-way, public parks and other City, County, State, Federal and Special District land may only be captured by an enforcement officer or the duly authorized representative of the public agency controlling the land after being determined to meet one of the conditions listed in (a) above. Disposition of cats captured on public lands shall be in the manner required in paragraphs (b) through (e) above.

(g) Any person found to be capturing a cat in a manner determined to be inhumane or releasing a cat in violation of (d) above, that person commits a Class A violation.

5.228 Impounding Regulations and Disposition of Impounded Cats.

(a) LCARA shall keep any cat delivered and accepted for impoundment for a period of time hereinafter specified. A daily record of such cats shall be kept at the place of impoundment and shall be made available to the public. LCARA shall dispose of such cats in accordance with the following provisions.

(1) An unregistered or unidentified cat, or a cat, the owner of which is unknown, may be adopted or destroyed in accordance with LCARA policy and State Law

(2) A registered or identified cat, or a cat, the owner of which is known, which has not been redeemed within 120 hours of notification of the owner by telephone contact, or by mailing or by posting at the owner's dwelling the impoundment notice, may be destroyed or adopted.

(b) Except as provided in LRC 5.228(a) above, LCARA shall notify the owner by telephone or by the mailing of an impoundment notice within 24 hours after the impoundment that the cat will be destroyed within 120 hours after such notification. The impoundment notice shall advise the owner of the place where the cat is kept, the procedures required for redemption of the cat, the fees for the impoundment, daily care and redemption and the consequences of failure to redeem the cat.

(c) Any animal given to LCARA by the owner for disposition may be destroyed immediately or, in the alternative, adopted by any person. The owner shall pay required fees for destroying

and/or handling the animal(s). For purposes of this section, an owner is a person who has had the animal in his or her care, possession, custody or control for six weeks or more.

(d) Notwithstanding the previous subsections, abandoned or unwanted litters aged two months or less may be destroyed immediately or, in the alternative, adopted by any person. This subsection does not apply to litters impounded following a search of premises.

(e) Notwithstanding the previous subsections, certain sick or injured cats may be destroyed immediately pursuant to the provisions of Lane Code 7.100.

5.229 Redemption and Adoption. Redemption and adoption of cats accepted by LCARA for impound shall be the same as for dogs as established in Lane Code 7.065.

5.230 Cat Registration and Identification.

(a) All cats allowed to be at large within the City of Lowell must be registered by the City of Lowell. A certificate by a licensed veterinarian that the cat has been altered or is otherwise incapable of reproducing must be provided when initially registered. Registrations must be renewed at least every three years. A current rabies vaccination certificate is required for initial registration and for registration renewal. Registrations will not be renewed beyond the expiration date of the rabies shot. Registration tags must be displayed on a cat's collar or harness if the owner wishes to have the cat returned directly if captured while at large. Cats which are registered but do not display the registration tag must have a micro chip implanted for identification purposes. If captured, a cat with only a micro chip can only be identified after being transported to LCARA for impound and the owner will have to pay all incurred impoundment fees prior to release by LCARA. If such a cat is found to not be registered by the City of Lowell, the cat must also be registered, including required spaying or neutering, within 15 days of release by LCARA. Failure to do so constitutes a Class A violation.

(b) A Feral Cat Colony must have a responsible person within a reasonable distance from the colony. This person is deemed the "owner" and is held accountable for such animals under their care. Registration of Feral cats is not required but they must be spayed/neutered, as identified by a clipped right ear, and have a micro chip implanted to insure return to the responsible person if captured.

5.231 Cat Registration Fees. Fees established by Lane County for cat registration are hereby adopted unless established otherwise by resolution of the City Council. Such fees shall be set no higher than necessary to recoup all costs to the City to administer the registration program and enforce this cat control code.

5.232-5.239 Reserved for Expansion.

CAMPING AND RECREATIONAL VEHICLES

5.240 Camping and Occupancy, Parking and Storage of Recreational Vehicles. This section adopted by Ordinance 240 unless otherwise indicated.

5.241 Definitions. As used in this Code, the following words, except where the context clearly indicates otherwise, mean:

(a) Campsite: Any place where any bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established or maintained for the purpose of maintaining

a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, recreational vehicle or any vehicle or part thereof.

(b) Occupancy: A Recreational Vehicle is considered occupied when any person or persons sleep overnight or utilize bathroom and kitchen facilities.

(b) Recreational Vehicle: A vacation trailer or other vehicular or portable unit which is either self-propelled or carried by a motor vehicle and which is intended for human occupancy and is designed for vacation or recreational purposes but not for permanent occupancy as a dwelling. "Recreational vehicle" also includes camper, motor home, and travel trailer as defined in Oregon Revised Statutes, which definitions are adopted and by this reference incorporated herein (ORS 801.180, 801.350, 801.565)

(c) To Camp: To set up or to remain in or at a campsite.

5.242 Prohibited Camping on Public Property. No person shall camp in or upon any sidewalk, street, alley, lane, public right-of-way, park, or any other publicly-owned property or under any bridge or viaduct except as otherwise authorized in 5.244 or by declaration of the City Council in emergency circumstances. This prohibition does not apply to public property owned or controlled by federal, state or county agencies, where camping is permitted under their rules.

5.243 Recreational Vehicle Parking Restrictions. The following standards apply to the off-street and on-street parking, storage, and occupancy of recreational vehicles:

(a) Recreational vehicles shall not be parked or stored on any portion of a property or street when such parking of the vehicle inhibits the necessary view of oncoming traffic. If parked in a street, recreational vehicles shall be parked no closer than 30 feet from a street intersection.

(b) No portion of a parked recreational vehicle may block any portion of a sidewalk, street, alley, travel lane or driveway access within the City of Lowell.

(c) Permanent occupancy of recreational vehicles regardless of location is prohibited. Temporary occupancy must comply with 5.244. Occupancy at established and permitted Recreational Vehicle Parks is exempt from this prohibition.

(d) Parking of unoccupied recreational vehicles within the public right-of-way is only allowed in that portion of the right-of-way directly adjoining the property of the recreational vehicle owner.

(e) Inoperable recreational vehicles and/or those without current registration are prohibited from parking within the public right-of-way.

5.244 Temporary Occupancy of Recreational Vehicles Or Campsite.

(a) Permanent Occupancy Prohibited. No person shall permanently occupy a recreational vehicle or campsite on any property within the city. Except as otherwise authorized by this Code, permit, or emergency declaration, the following constitutes prima facie evidence of permanent occupancy:

(1) Occupying a recreational vehicle on public property in the city for a period in excess of fourteen (14) consecutive days; or

(2) Occupying a recreational vehicle or maintaining a campsite on private property, for a period in excess of fourteen (14) consecutive days.

(b) Permit Issued. The City Administrator may issue a permit to any person for temporary occupancy of a campsite or recreational vehicle within the City of Lowell that exceeds fourteen days. No permit shall be necessary for temporary occupancy of a campsite or recreational vehicle in a regularly established trailer park or commercial campground.

(c) Permit Conditions. A permit issued under this section may be issued subject to the following conditions:

(1) Receipt by the City of written application signed by the applicant and property owner, if applicable, for each recreational vehicle or campsite and permit application fee, if any. The application shall include the following information: The true name and permanent address of the applicant; address of proposed location for occupancy of recreational vehicle or campsite; dates and period of time for which the permit is requested; proposed method for collection and disposal of garbage and sewage;

(2) The proposed activity for which the permit is issued is not likely to cause the peace and quiet of any person to be disturbed;

(3) The proposed activity is unlikely to result in litter, trash, garbage, sewage, or other unsanitary material being placed or left on public or private property;

(4) A permit issued shall be valid for such period of time as the permit states, but in no event shall the period of the permit exceed 30 days for occupancy on public property and 180 days for occupancy on private property in any consecutive 12 month period.

(d) Permit fee. The Council may, by resolution, set an application fee for the permit for temporary occupancy of a campsite or recreational vehicle.

5.245 Operation of Recreational Vehicle with Unsealed Disposal System; Exemptions.

(a) A person commits the offense of operation of a recreational vehicle with unsealed disposal system if:

(1) The person has the use, possession or control of any vehicle or structure constructed for movement on highways;

(2) The vehicle or structure is equipped with a plumbing, sink or toilet fixture; and

(3) The disposal system for the vehicle or structure is unsealed or uncapped while the vehicle or structure is in any way or place of whatever nature open and in use.

(b) This section does not apply to disposal systems being discharged into or connected with a sewage disposal system approved by the Health Division.

5.246 Penalty. Any person or persons who violate any of the provisions of Sections 5.240 through 5.245, or whose permit is canceled or who shall fail to remove any campsite or recreational vehicle, as defined herein, after being ordered to do so by the City Administrator, will be cited into Municipal Court and may have a fine, not to exceed \$250, imposed. Each day the violation continues is considered a separate offense.

5.247 Abatement. In addition to issuing a citation and fine, the City may take action to remove a campsite or recreational vehicle in violation of Sections 5.240 through 5.245 through nuisance abatement procedures established in this Code or by other remedies allowed by law.

5.248-5.249 Reserved for Expansion.

BLASTING

5.250 General Blasting Regulation. Sections 5.250 through 5.268 allow controlled blasting within the City of Lowell and prescribe methods for blasting permit approval, appeal and revocations and by establishing blasting regulations. These sections are adopted by Ordinance 182 unless specified otherwise.

5.251 Definitions.

- (a) "Applicant" is the person, partnership or corporation which has filed the Blasting Permit request.
- (b) "Blaster-in-Charge" is the person designated in the Blast Plan as the person responsible for the planning, loading and firing of the permitted blasts.
- (c) "Blasting Log" is a record of the location, depth and contents of each explosive-filled hole and of the initiating circuitry which connects these holes, and which is made on-site as the holes are primed, loaded, stemmed, wired and connected to the circuit.
- (d) "Blasting Permit" is a permit issued under this ordinance which authorizes the controlled use of explosives with the City.
- (e) "Blast Plan" is a conceptual plan made by the Blaster-in-Charge, which provides information about the proposed blasting, including explosives handling, notification and warning methods, safety precautions, and technical information.
- (f) "Explosive" is any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, blasting agents, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.
- (g) "Misfire" is a charge of explosive material that fails to detonate completely after initiation.
- (h) "Technical Advisor" An expert, chosen by the City Council, who will review permit requests, blasting logs and misfire correction plans, conduct site inspections, and advise the City Engineer on Blasting Permit approval, conditions, and/or revocation.

5.252 Permit Required For Possession With Intent to Use. No person or company shall possess, with the intent to use, explosives within the City limits except under the terms of a valid Blasting Permit and this ordinance.

5.253 Manufacture, Sale, and Disposal Not Allowed. Manufacture, sale, and/or disposal of explosives is not allowed within the City.

5.254 Blasting Permit Submittal Requirements.

- (a) Blasting Permit is required for each discreet project requiring blasting. The following items must be submitted before a request for a Blasting Permit can be considered by the City:
- (1) Name & Address of Applicant.
 - (2) Proof of required insurance.
 - (3) Processing fee (**See Section 5.259(a)**).
 - (4) Conceptual Blast Plan.
- (b) The Blast Plan shall consist of the following:
- (1) Personal Information: Names and addresses of Blaster-in-Charge and all persons handling explosives. Experience & qualifications of Blaster-in-Charge. If the Blaster-in-Charge is not an employee of the Applicant, provide proof of Blaster-in-Charge's insurance and bond.
 - (2) General Blast Information: Reason for the proposed blasting, time period over which the blasting will be done, approximate cubic yards of rock to be removed, number of proposed blasts, including any test blasts, maximum quantity and kind of explosives to be used.
 - (3) Location: Engineering plans or other plans showing the location of each proposed blast and test blast.
 - (4) Transportation and Storage: Proposed methods of transportation, handling, and storage of explosives, the route used for deliveries and returns, the hours of transportation, the maximum quantities of explosives to be transported, and the type of vehicles to be used for

transport. Persons transporting the explosive must possess a commercial license with a Hazardous Materials endorsement.

(5) Pre-Blast Notification: Names and addresses of all utilities, property owners, businesses, and residents which are proposed to receive written notice of blasting operations. Attach a sample of the written notice, and a tax-lot map with those properties highlighted and the blast area clearly marked.

(6) Blast Warning System: Describe the means of guarding the blast area during drilling, loading and blasting, give the type and number of audible warning signals, give the location and method of visual warning signals (signs, flagmen, etc.). If necessary, include a map showing the location of flagmen, barricades, signs, temporary road closures and detour routes.

(7) Record-keeping: Attach a blank sample of the blasting log which will be used.

(8) Flyrock Control: Describe techniques for controlling flyrock, including type and size of mats, overlap of adjacent mats, and distance mats will extend out of the loaded area.

(9) Vibration Control, Monitoring and Pre-Blast Surveys: Describe techniques for controlling vibration. Note the type, number and location of seismic monitoring devices. Describe any proposed pre-blast surveying. Provide copies of photographs or video documentation of pre-blast conditions.

(c) Blast Plan Technical Information. For each blast, the Blast Plan must include the following:

(1) General Information: Location, date and approximate time of blast, and the approximate quantity of material expected to be removed.

(2) Hole Information: Average depth, diameter, spacing, number of rows of holes, number of holes per row, angle, average amount of sub-drill, burden, and stemming depth and material.

(3) Explosives Information: Types and packaging of explosives, manufacturer, technical data sheets. Average pounds per hole, total pounds per blast. If applicable, size of cartridges, and the type of primer.

(4) Initiation Method, Type and Placement: Method of initiation (electric vs. non-electric). If electric, give type, size and capacity of blasting machine. If non-electric, give type of initiator (reactive powder, detaline, etc.) Describe placement of initiator (bottom, center, top, double primed, etc.)

(5) Detonator and Delay Information: Number of detonators in each series, number of series in parallel, type and number of delays, number of pounds of explosives per delay period.

5.255 Technical Advisor Position Created.

(a) There shall be a Technical Advisor appointed by the City Council who will be an experienced blaster capable of the duties described herein by reason of education and experience. The Technical Advisor shall have the power to:

(1) Review permit requests and misfire correction plans, conduct site inspections, and issue advice to the City Engineer.

(2) Order blasting operations temporarily stopped when a site inspection reveals a probable violation of the terms of the Blasting Permit.

(3) Approve the loading and firing of drilled shots when a site investigation reveals that those shots appear to be in conformance with the Blasting Permit.

(4) Exercise any of the powers granted the City Engineer hereunder, when such powers are delegated to the Technical Advisor in writing by the City Engineer.

(b) The Council shall also name at least two other experienced blasters to serve as backups for the Technical Advisor. The City Engineer may choose from any of the backup advisors

whenever the original advisor is unavailable. The backup advisors shall have the same powers granted the original Technical Advisor.

5.256 Blasting Permit Approval Criteria. The Technical Advisor shall examine all Blasting Permit applications and make a recommendation to the City Engineer to either approve the application as submitted, to approve the application with added conditions (**see Section 5.257**), or to deny the application. After receiving the Technical Advisor's recommendation, the City Engineer shall issue a decision on the matter. The three criteria under which permit requests shall be evaluated are as follows:

(a) Insurance. Minimum blaster's liability insurance for both the Applicant and the Blaster-in-Charge shall be \$1,000,000, to include X,C,U coverage. Higher amounts are necessary when the circumstances of the proposed blast are such that more than \$1,000,000 in personal injury and/or property damage could occur. A certificate of insurance must accompany the application, and must state on its face that the underlying liability insurance policy includes coverage to indemnify, hold harmless and defend the City, its officers, employees, and agents (including the City Engineer, the Technical Advisor and all backup Technical Advisors) in and from any cost, attorney's fees or judgments incurred or rendered in any and all suits or actions brought against it as a result, in whole or in part, from the proposed blasting. The certificate shall also state that the insurance company will provide the City with at least ten days notice of cancellation or reduction of the insurance coverage.

(b) Blaster-in-Charge. The Blaster-in-Charge must hold a valid Certificate of Possession for Explosives issued by the Oregon State Fire Marshals Office. A minimum 5-year verifiable work history as the head blaster on similar projects is mandatory. At least three professional references must also be provided. The Technical Advisor and/or City Engineer may choose to obtain more references from various other blasting professionals and government officials. This may include, but is not limited to, inquiry into the records of OSHA, the Worker's Compensation Board, the Construction Contractor's Board, and the State Fire Marshall. The work history and references must demonstrate that no damage to property nor injury to persons has occurred on the Blaster-in-Charge's past projects, and that the proposed blasting is within the scope of the Blaster-in-Charge's proven abilities.

(c) Blast Plan. The Blast Plan must be complete, containing all relevant items listed in Section 4, and must conform to all requirements and regulations contained within this ordinance. Any application containing an incomplete or noncompliant Blast Plan may be summarily rejected. The Blast Plan must demonstrate that the Blaster-in-Charge has a thorough understanding of the work to be accomplished, of the inherent dangers in such work, and of effective ways to minimize those dangers. The failure of the Blaster-in-Charge to propose within the Blast Plan safety measures which, in the opinion of the Technical Advisor and/or the City Engineer, are reasonably certain to be necessary (for example, flyrock matting when blasting near structures) is cause for denial of the Blasting Permit. The burden is upon the Blaster-in-Charge to demonstrate competence and thorough blast planning.

5.257 Blasting Permit Conditions. An express condition of all Blasting Permits issued under this ordinance is strict compliance with all parts of this ordinance, and with any other applicable federal, state and local explosives regulations, whether or not such a condition is stated on the face of the permit itself. A Blasting Permit may also be issued subject to any other reasonable and necessary condition. Such other conditions include, but are not limited to, the following:

- (a) Amount and type of liability insurance.
- (b) Format of written notice of blast, and the parties who must receive notice.

- (c) Format of and information contained on the Blasting Log.
- (d) Means of guarding blast area during drilling, loading and blasting.
- (e) Type and number of audible and visual warning signals prior to the blast.
- (f) Flyrock control methods.
- (g) Vibration control methods.
- (h) Pre-blast surveys of selected structures.
- (i) Seismic monitoring.
- (j) Methods of transportation, handling, and storage of explosives.
- (k) Timing and number of blasts.
- (l) Maximum quantity and kind of explosives used.
- (m) Depth, diameter, spacing, angle, burden, and stemming of holes.
- (n) Initiation method, type and placement.
- (o) Number and arrangement of detonators.
- (p) Number of pounds of explosives per delay period.

5.258 Blasting Permit Processing Times. A Blasting Permit may take up to 5 working days to issue when the application is complete. The City is not obliged to process incomplete applications, and shall return the unprocessed request to the Applicant within 5 working days of submittal.

5.259 Blasting Permit Fees. Regular and special fees shall be as follows for the various stages of Blasting Permit review and use:

- (a) Non-Refundable Processing Fee. A non-refundable processing fee shall be submitted with the Blasting Permit request. In the event an application is deemed incomplete, a second Processing Fee is due when the corrected application is resubmitted. The amount of the Processing Fee shall be established by resolution of the City Council.
- (b) Regular Inspection Fees. Regular Inspection Fees shall be equal to the City's actual costs incurred at standard hourly rates for work done by the City Engineer and Technical Advisor in conjunction with the proposed blasting. Total Regular Inspection Fees will be calculated at the conclusion of blasting operations.
- (c) Special Inspection Fees. Special Inspection Fees may be substantially higher than Regular Inspection Fees, and shall be equal to the all the City's actual costs incurred in conjunction with a misfire or other unexpected occurrence. Costs which will be paid by the Applicant include charges for special site visits, risk assessments, and professional review of the proposed correction plan. Total Special Inspection Fees shall be calculated after the misfire or other condition has been corrected and shall be constructed to recover all of the City's costs incurred, including overhead, staffing, consulting and legal costs, as applicable to the resolution of conflict or complaints arising from the blasting ordinance. The blaster-in-charge shall be responsible for receiving and addressing complaints arising from the blasting ordinance. Complainants shall be addressed in a professional and courteous manner and provided with factual information concerning the operations. A written record of complaints and responses shall be provided to the City.
- (d) Refundable Deposit Required.

(1) Before an Applicant may receive a Blasting Permit, the Applicant must first pay a refundable deposit. Additional amounts must be paid before an Applicant may resume drilling, loading or blasting following a misfire or other unexpected occurrence. The Technical Advisor shall set the amount of both the original deposit and any additional deposits by making an

estimate of the charges expected to accrue due to the planned blasting and/or misfire or other unexpected occurrence.

(2) Deposits shall be used to pay any outstanding fees due on the project. After conclusion of the project, the balance, if any, shall be refunded to the Applicant.

(3) If the outstanding fees at any point exceed the deposit, the Applicant will be notified and will be sent an invoice for the additional charges. If the invoice is not paid within ten (10) days of the date of notification, the City may suspend the effectiveness of the Blasting Permit until the invoice is paid in full.

5.260 Limitation of City Liability. By the passage of this ordinance and/or the subsequent issuance of a Blasting Permit, the City assumes no responsibility or liability for injury to persons and damage to property caused by the permitted blasting. The approval of a Blasting Permit by the City shall not be a warranty or guarantee of the safety or effectiveness of any facet of the permitted blasting. The Applicant and Blaster-In-Charge shall continue to have sole responsibility and liability for injury to persons and damage to property.

5.261 Appeal of City Engineer's Decision. Any Applicant who is dissatisfied with the City Engineer's decision to make certain modifications or impose certain conditions on a Blasting Permit, or to revoke or deny a Blasting Permit may, within ten days of the decision, file an appeal to the City Council with the City Recorder. Within 30 days thereafter, the City Council shall grant a hearing to the appealing party. On appeal, the City Council shall have the same powers hereunder as the City Engineer. The decision of the City Council shall be final.

5.262 Blasting Permit Modification and Revocation. The City Engineer shall have the power to modify or revoke a Blasting Permit if any one of the following occur:

- (a) City staff discovers that the Applicant or Blaster-in-Charge has supplied the City with inaccurate or fraudulent information.
- (b) City staff discovers that the insurance coverage of either the Applicant or the Blaster-in-Charge has been canceled or reduced below the minimum level required in **Section 5.256**.
- (c) City staff discovers that any of the conditions of the Blasting Permit have been violated.
- (d) The City Engineer is reasonably sure that continued operations by the Applicant and/or Blaster-in-Charge would pose an imminent danger to property and/or persons.

5.263 Technical Advisor Notification and Inspection, Waiver of Inspection. After a shot is drilled, but before it is loaded or wired, and before any misfire is refired, the Blaster-in-Charge shall notify the Technical Advisor by telephone and also by fax and/or by mail. On all first shots to be fired under the Blasting Permit, and on all other shots for which a Waiver of Inspection has not been granted, the Technical Advisor shall make a site inspection to verify that the operations appear to be in compliance with the terms of the Blasting Permit and this ordinance. Said inspection shall occur within 2 working days of the time notice is received by the Technical Advisor. If the Technical Advisor does not find a problem, he shall instruct the Blaster-in-Charge to load and fire the shot. But if the Technical Advisor does find a problem, he shall order the Blaster-in-Charge to suspend operations pending review by the City Engineer. The City Engineer will then, within 2 working days of the time the Technical Advisor discovered the problem, either lift the suspension imposed by the Technical Advisor if corrective action has been taken, or modify or revoke the permit as provided for in Section 5.262. If the City Engineer concurs, the Technical Advisor may waive site inspection of any shot after the first shot, if the Technical Advisor is reasonably comfortable with the operations as they have progressed to that

point. After receiving notice of a drilled shot ready for site inspection, the Technical Advisor may, in lieu of a site inspection, provide a written Waiver of Inspection to the Blaster-in-Charge. Once the Blaster-in-Charge is in possession of the Waiver of Inspection, he may load and fire the shot in question. In the event of a misfire, damage to property, injury to persons, or other unexpected occurrence, the Blaster-in-Charge shall immediately notify both the Technical Advisor and the City Engineer by telephone and also by fax and/or by mail.

5.264 Misfire Procedures. After a blast has been fired, the Blaster-in-Charge shall make a careful inspection to determine that all charges have exploded before any other person is allowed to return to the operation. If a misfire is discovered, the Blaster-in-Charge shall immediately barricade the area and post a guard to exclude all personnel and bystanders. The guard and barricades shall remain on site, 24 hours a day, until the misfire is corrected. The Blaster-in-Charge shall provide the Technical Advisor with a written notice of the misfire. The written notice shall include the Blasting Log of that shot, a complete description of the misfire condition, and a proposed plan for correction. The Technical Advisor shall review the information in a similar manner to a Blast Plan, and may also conduct a site investigation prior to issuing a recommendation on the matter. No further work shall be done at the blast site until the City Engineer gives permission to resume operations and additional deposit is paid, if required by Section 9.4. Said permission shall be given only after the Technical Advisor issues a favorable recommendation regarding the proposed misfire correction plan.

5.265 Additional Explosives Regulations. In addition to the foregoing requirements of this ordinance, the following additional regulations apply to the transport, storage and use of explosives within the City.

(a) General Safety Regulations. In addition to the specific conditions and requirements of the Blasting Permit, ALL FEDERAL, STATE AND LOCAL REGULATIONS APPLICABLE TO OBTAINING, OWNING, TRANSPORTING, STORING, HANDLING, AND USING EXPLOSIVES SHALL BE FOLLOWED. A VIOLATION OF ANY FEDERAL, STATE AND LOCAL REGULATION IS ALSO A VIOLATION OF THIS ORDINANCE.

(b) Storage of Explosives. No explosives may be stored within the City except in a locked day box which meets the standards for a Type 3 Magazine as provided in ARTICLE 77 OF THE 1994 VERSION OF THE UNIFORM FIRE CODE, OR ITS SUCCESSOR. Said day box shall be kept within line-of-sight vision of the Blaster-in-Charge at all times. Only those explosives which will be used in the day's work may be brought into the City, and any explosives remaining at the end of the day must be removed from the City before nightfall.

(c) Handling of Explosives. No person other than the Blaster-in-Charge or a helper who is so designated in the Blasting Permit, and who is under the direct supervision of the Blaster-in-Charge, shall handle explosives. Only the Blaster-in-Charge may make lead line connections and/or detonate explosives.

(d) Default Distances for Written Notification, Pre-Blast Inspection, and Seismic Monitoring. Unless otherwise noted in the Blasting Permit, written notification, pre-blast structural inspections, and seismic monitoring shall be required as follows, where D_a , D_b and D_c are the actual distances in feet from the closest point in the blast, and \sqrt{w} is the square root of the maximum weight of the explosives in pounds detonated within 8 milliseconds of another detonation event:

(1) Distance from the blast within which written notification to utilities, property owners, businesses and residents is required: $D_a=90\sqrt{w}$

(2) Distance from the blast within which pre-blast inspections of all structures is required:

$$D_b = 75 \sqrt{w}$$

(3) Distance from the blast within which seismic monitoring of selected structures is required: $D_c = 601 \sqrt{w}$

(e) Manner of Written Notification. The Blaster-in-Charge shall provide written notice to all utilities, businesses, property owners, and residents within the distance 13 as calculated in Section 15.4(a), or as otherwise designated for notice in the Blasting Permit. The written notice shall be in the form approved by the Blasting Permit, and shall include a description of the character and intent of the blasting program and its anticipated impact on local residents, the time and place of the planned blast(s), a description of the blast warning signals and planned road closures, and telephone number(s) for public contact with the Applicant and/or Blaster-in-Charge. Distribution of this written notification shall be made at least 7 days prior to the start of blasting.

(f) Pre-Blast Inspections. A pre-blast inspection of all structures within the distance D_b , as calculated in Section 15.4(b), or as otherwise designated for inspections in the Blasting Permit, shall be offered to the owners of the structures. The inspections shall be provided at no cost to the owner, and shall be performed by a qualified third party who is not an employee of the Applicant or the Blaster-in-Charge. Where inspections are refused by the owner of a structure, a certified letter shall be sent to the owner advising them of their right to a pre-blast inspection and the possible consequences of denying the inspection. All pre-blast inspections shall be completed, and a copy of the individual inspection reports and a log of all photos taken shall be provided to the City at least two days prior to the start of blasting.

(g) Seismic Monitoring. All blasts shall be monitored using blast monitoring equipment designed for this purpose and carrying a certificate of calibration issued within one year of the proposed blast. The blast monitors shall record peak particle velocity and frequency in three orthogonal directions and air over pressure in dBLL. For shots in which the pounds detonated per 8 millisecond time increment is less than ten pounds, one blast monitor is required. When ten or more pounds are detonated within an 8 millisecond interval, two monitors are required. Additional seismic monitoring of selected structures within the distance D_c as calculated in Section 15.4(c), or as otherwise designated for monitoring in the Blasting Permit, may be required.

(h) Blasting Logs. As each hole is primed, loaded, stemmed, wired and connected to the circuit, the Blaster-in-Charge shall record those activities in a Blasting Log. The Blasting Log shall be in the form approved by the City as part of the Blasting Permit. Blasting Logs shall be completely filled out on site. All Blasting Logs compiled during the permitted blasting activity shall remain on site during working hours, and shall be available for inspection by City personnel.

(i) Blast Warning. Prior to blasting, the Blaster-in-Charge shall make certain that all surplus explosives are in a safe place, that all persons and vehicles are at a safe distance or under sufficient cover, and that ample warning has been given to all persons who could reasonably be startled or affected by the blast as determined by the Blaster-in-Charge. At least three minutes before any blast, warning signs shall be erected and workers with red flags should be stationed at each avenue of approach and also as may be specifically required in the Blasting Permit. An audible warning siren shall be sounded before firing any blasts.

(j) Traffic Control. Road closures and detours shall be done only as approved by the Blasting Permit. Road closures and detours must account for school bus schedules and shall not delay school buses on regularly scheduled routes.

(k) Maximum Air Blast. The maximum air blast over pressure permitted at the closest structure designed for human occupancy is not to exceed 133 dBL @ 2.0 Hz hi pass system per the USMB RI 8485.

(l) Peak Particle Velocity. The peak particle velocity in any seismic trace at the dominant frequency to be allowed on any structure designed for human occupancy is to be determined by the following chart taken from the US Department of the Interior Blasting Guidance Manual 8507: (Contact City Staff for Chart).

5.266 Administrative Civil Penalty. In addition to, and not in lieu of, any other enforcement mechanism authorized by this ordinance or state law, upon determination by the City Engineer that a person or company has violated any provision of this ordinance or permit issued hereunder, the City Engineer may impose upon the violator an administrative penalty in an amount not to exceed \$250.00. Each day that a violation continues to exist shall constitute a separate violation.

5.267 Appeal. Any person or company issued a notice of administrative civil penalty may appeal the penalty to the City Council in the same manner and within the same time as provided in Section 11 of this ordinance. The decision of the City Council shall be final.

End of Title Five

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TITLE SIX VEHICLES AND TRAFFIC

6.000 State Traffic Laws. The provisions of ORS, Chapter 801, 802, 803, 805, 806, 807, 809, 810, 811, 813, 814, 815, 816, 818, 820, 821, 822, 825 and OAR 740.100.0010 issued thereunder, and ORS Chapter 153, are hereby adopted, and violations thereof shall constitute an offense against the City. (Adopted, Ord 220)

6.001 Vehicles and Traffic, General. Unless otherwise indicated elsewhere in this Section, Sections 6.001 through 6.084 of the LRC are enacted by City of Lowell Ordinance 241.

6.002 Vehicle Code of Oregon Adopted. The City of Lowell will enforce the Vehicle Code of the State of Oregon within the incorporated boundaries of the City and cite offenders into the appropriate courts having jurisdiction over the cited offense. Penalties for violations of the Vehicle Code of the State of Oregon will be as prescribed in the Vehicle Code.

6.003 Definitions. Definitions for words or terms used in this title shall be those contained in the Oregon Vehicle Code or elsewhere in the Oregon Revised Statutes, except where the context clearly indicates a different meaning.

6.004 Authority of the City Council. The City Council may approve by ordinance or resolution, providing, where required by Oregon Revised Statutes, appropriate state and county agency approvals have been obtained, and providing consistency with established traffic control standards, the following:

- (a) A City-wide Transportation System Plan and amendments to such a plan.
- (b) Limitations on the use of certain streets, portions of streets or bridges by heavy or oversized vehicles. Such limitations may or may not include exceptions.
- (c) Names of Streets.
- (d) Parking prohibitions, restrictions or limitations within public rights-of-way and City owned or controlled property.
- (e) Designated passenger or freight loading and unloading zones within public rights-of-way and City owned or controlled property, excluding school bus stops.
- (f) Special traffic control features including, but not limited to, limitations on turns, establishment of crosswalks and setting of speed limits.

6.005 Responsibilities of the Public Works Department. The Public Works Department shall:

- (a) Place and maintain all traffic control signs and pavement markings for traffic movement and parking areas within all public rights-of-way of the City as required by State Statutes, established traffic control standards and resolutions or ordinances of the City, with the exception of those streets owned and maintained by Lane County.
- (b) Notify property owners to remove or trim or otherwise cause to be removed or trimmed, any hedge, shrubbery or tree that impacts free movement of traffic or vision clearance requirements within public rights-of-way.

6.006 Authority of Public Safety Agencies.

- (a) The Lane Country Sheriff's Department, another Police Department under contract with the City to provide law enforcement services or any other police agency having jurisdiction or

providing mutual assistance within the City shall have the authority to enforce the provisions of the LRC.

(b) In the event of fire or other emergency or to expedite traffic or safeguard the public, police and fire officials or persons working under their control, may direct traffic or the placement of temporary traffic control devices, as conditions may require, notwithstanding the provisions of the LRC.

6.007 Placement of Traffic Control Signs, Devices or Street Markings:

(a) Permanent placement of traffic control, devices or street makings is prohibited by any person or organization other than City of Lowell Public Works personnel, Lane County Public Works personnel or companies under contract to the City or County to install such devices. This prohibition includes private marking of any parking area within any public right-of-way within the City for any reason without City permission.

(b) Temporary placement of traffic control signs or devices, in addition to that authorized in 6.006 (b), is authorized for temporary construction in public rights-of-way or for private property construction where traffic may be impacted. In such cases, the person responsible for the construction will provide and receive approval of a traffic control plan from either the City or County, depending on ownership of the right-of-way, prior to placing any signs or devices and will maintain said signs and devices during the period of the construction and immediately remove them when construction is complete.

(c) Violations of 6.007 shall result in a fine of \$100.00 plus any cost to the City to remove traffic control signs and devices.

6.008-6.009 Reserved for Expansion.

6.010 Parking.

6.011 Method of Parking. For arterial and collector streets and with the exception of marked or signed parking which allows otherwise, all parking on public rights-of-way within the City of Lowell shall be parallel to the street in the direction of traffic. Street side wheels shall be outside the fog line or at least 12 feet from the center line of the street, where no fog line exists. Where no centerline or fog line exists, street side wheels must be off any paved surface. For local streets, parking must not impact traffic flow.

6.012 Prohibited Parking. The following methods or parking locations are prohibited:

(a) Within any travel lane of any street for any period of time, whether occupied or unoccupied.

(b) Upon any bridge, viaduct or other elevated structure used as a street.

(c) Within any alley except to load or unload persons or material and then not to exceed 15 minutes.

(d) Parking in a manner to block another's driveway without permission.

(e) Double parallel parking.

(f) Upon any street for more than 48 hours if the vehicle is without a current registration, is inoperable or is substantially dismantled.

(g) Within 30 feet of an intersection or otherwise creating a vision clearance hazard.

(h) Upon any street for the following principle purposes:

(1) Maintaining or repairing such vehicle, except in an emergency

(2) Selling merchandise from such vehicle unless so authorized or licensed under ordinances of the City.

(i) In any other location specifically prohibited by resolution of the City Council and posted as such.

6.013 Exemptions. Emergency response vehicles, City and County Public Works Vehicles, US Postal Service Vehicles, School Buses and service/delivery vehicles delivering in residential districts only, are exempt from parking prohibitions in 6.012. Vehicles and equipment being utilized in construction activities are also exempt at construction sites if a traffic control plan has been approved pursuant to 6.007 (b).

6.014 Violations.

(a) Violations of this section shall result in a fine of \$25.00.

(b) If, in the opinion of officials, the violation constitutes a traffic hazard, a vehicle in violation may be towed, at the owners expense, as provided for by state law or city code.

(c) Failure to pay fines for violations of this section may result in the vehicle being immobilized or towed, at the owners expense, as provided for by state law or city code.

6.015-6.019 Reserved for Expansion.

6.020 Persons in the Public Right-of-Way.

6.021 Pedestrian Travel.

(a) Pedestrians shall comply with ORS Chapter 814 contained in the Oregon Vehicle Code.

(b) Pedestrians shall not use any roadway for travel when sidewalks abutting the same are available. Where sidewalks are not available, pedestrians must travel outside the fog line of the roadway. Where a fog line is not available, pedestrians must travel outside the vehicle travel lane.

(c) Pedestrians must cross streets at marked crosswalks where such crosswalks exist. Where crosswalks do not exist, pedestrians must cross streets at street intersections if there is an intersection within 200 feet. If no intersection exists within 200 feet, pedestrians may cross a street at any point that allows oncoming vehicles at least 200 feet of vision clearance to see the pedestrian. Regardless of where pedestrians cross, they must not enter travel lanes when there is oncoming traffic.

6.022 Parades, Processions and Races. No parade, procession, race or other such event that would disrupt the usual use of city street, except those specifically allowed by state law, shall occupy, march or proceed along any street except in accordance with a permit issued by the City. Such permits may be granted where it is found that such parade, procession or race is not to be held for any unlawful purpose and will not in any manner tend to breach the peace, cause damage or unreasonably interfere with the public use of the streets. To the extent allowed by law, the City may require reimbursement for costs to the City for traffic control and law enforcement participation.

6.023 Roller Skating, Skateboarding and Roller Blading. Roller skating, skateboarding and roller blading are not allowed within vehicle travel lanes. Roller skating, skateboarding and roller blading are only allowed within public rights-of-way where pedestrian travel is allowed as described in 6.021. Persons that are roller skating, skateboarding or roller blading must yield to pedestrians. Under no circumstance will persons roller skating, skateboarding or roller blading attach themselves to a moving vehicle.

6.024 Play Prohibited. Persons are prohibited from playing on public streets within vehicle travel lanes of arterial and collector streets. This prohibition includes, but is not limited to, playing of ball games and use of remote controlled toys, tricycles, coasters, toy vehicles or sleds. Persons are not prohibited from such play activities upon public sidewalks, private driveways and local residential streets as long as pedestrian and vehicular travel are not hindered. Regardless, all play activities must yield to vehicles and pedestrians.

6.025 Penalties.

(a) Penalties for violations of this section not cited under the Traffic Code, with the exception of 6.022 shall be \$25.00.

(b) Penalties for violation of 6.022 shall not exceed \$500.

6.026-6.029 Reserved for Expansion.

6.030 Bicycles.

6.031 Operation.

(a) Bicycles shall be operated in accordance with the Oregon Vehicle Code.

(b) Bicycles shall not be ridden upon sidewalks except in residential areas. Within residential areas, bicycles ridden on the sidewalk shall yield to pedestrians.

(c) No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one hand upon the handle bars and in full control of the bicycle.

6.032 Bicycle Parking. No person shall park a bicycle upon a street, sidewalk, alley or driveway in a manner that will impede or obstruct vehicle or pedestrian traffic.

6.033 Penalties. Penalties for violations of this section, not cited under the Traffic Code shall be \$25.00.

6.034-6.039 Reserved for Expansion.

6.040 Damaging Sidewalks and Curbs.

(a) The driver of a vehicle shall not drive upon or within any sidewalk or parkway area except to cross at a permanent or temporary driveway.

(b) No person shall place dirt, wood or other material in the gutter space next to the curb of any street with the intention of using the same as a driveway.

(c) No person shall remove or damage in any way any portion of any curb or move any heavy vehicle or thing over or upon a curb or sidewalk without first notifying and receiving approval from the City, and any such person shall be held responsible for any and all damage.

6.041-6.049 Reserved for Expansion.

6.050 Abandoned Vehicles.

6.051 Definition. For the purpose of this section, "Abandoned" means without current registration or in an inoperable or dismantled condition upon any public right-of-way of the City or upon any area of public property.

6.052 Investigation/Impoundment Notice.

(a) Whenever a vehicle is found abandoned within a public right-of-way or on public property within the City, in the same position for seventy-two (72) hours, the City Administrator or a Police Officer shall:

(1) Make a routine investigation to discover the owner and verbally request removal of the vehicle within twenty-four (24) hours; or

(2) If the owner is not found, to place a notice upon the windshield, or some other part of the vehicle easily seen by the passing public.

(b) Such notice shall state that the City will remove and impound the vehicle under the provisions of this section within twenty-four (24) hours of the time of the posting, unless:

(1) The owner removes the vehicle; or

(2) Good cause is shown, satisfactory to the City, why such vehicle should not be removed by the owner, or removed and impounded by the City.

6.053 Removal by the City. If after twenty-four hours has elapsed since a request has been made for removal to the owner or notice has been posted on the vehicle, and no person has appeared to show good cause why such vehicles should not be moved, the City will tow the vehicle in accordance with State law and provisions of this Code.

6.054 Vehicles Constituting a Hazard. The City is authorized to remove vehicles constituting a hazard, as described in ORS 819.120, from the public right-of-way as prescribed in 6.053 without the notice required in 6.052.

6.055-6.059 Reserved for Expansion.

6.060 Vehicle Maintenance.

6.061 Vehicle Maintenance Prohibited in the Public Right-of-Way or on Public Property.

It shall be unlawful for any person or persons to overhaul, repair, service or dismantle any vehicle on or within any public right-of-way or other publicly owned property within the City limits of Lowell, excepting for minor emergency repairs.

6.062 Vehicle Maintenance on Private Property. Vehicle Maintenance on private property must comply with the uses allowed by the land use zone in which the property is located.

6.063 Vehicle Maintenance Safety. Under no circumstances is a vehicle undergoing maintenance to be left unattended while on jacks or blocks, with its engine running or in any other manner that may be unsafe if such vehicle is located in an area easily accessible to minors.

6.064 Penalty. The penalty for violations of Section 6.061-6.063 is a fine not to exceed \$250.00.

6.065-6.069 Reserved for Expansion.

6.070 Storage of Vehicles on Public Property.

6.071 Storage Prohibited.

(a) Storage of any motor vehicle, recreational vehicle or trailer within or partially within the public right-of-way or on other public property, operable or inoperable, currently registered or unregistered, for a period of more than 72 hours is prohibited.

(b) Storage of any camper, camper shell, chassis, engine, transmission, running gear, auto body or other vehicle body part or accessory within or partially within the public right-of-way or other public property is prohibited for any period of time.

6.072 Exceptions.

(a) Personally owned vehicles, if legally parked and lawfully registered, may be stored within or partially within the public right-of-way directly adjacent to residential property owned or occupied by the vehicle owner as long as such storage is in accordance with **Section 6.010**, regarding parking.

(b) Possession of a valid permit to use the public right-of-way.

6.073 Penalty. The penalty for violations of this section is a fine not to exceed \$250.00. In lieu of or in addition to any fine that may be imposed, the City may remove the vehicle under provisions of Section 6.050.

6.074-6.079 Reserved for Expansion.

6.080 Truck Routes and Restrictions.

6.081 Truck Route Established. All trucks exceeding 18,000 pounds gross weight are restricted to the following routes when transiting the City.

(a) East to south bound from Pengra Road: North Shore Drive (Pengra Road/Jasper-Lowell Road) to Pioneer Street (Jasper-Lowell Road) to Highway 58.

(b) South bound from Jasper-Lowell Road: Moss Street (Jasper-Lowell Road) to North Shore Drive (Jasper-Lowell Road), thence eastbound on North Shore Drive to southbound Pioneer Street or Westbound on North Shore Drive to Pengra Road.

(c) North and East Bound from Highway 58, the reverse of the routes identified above.

6.082 Exceptions. The following are exceptions to use of required use of the truck route:

(a) Any truck conducting business or making deliveries within the City of Lowell may utilize any local street conditional upon using the shortest route from the designated truck route to and from the City destination.

(b) Any emergency response vehicle.

(c) Any truck required to use an established detour around construction activities along the truck route.

6.083 Posting of Truck Route. The City shall place signs at appropriate locations which clearly identify the truck route and weight restrictions.

6.084 Penalty. Violations of Sections 6.081 will be cited into Municipal Court and shall be punishable by a fine not to exceed \$250.

End of Title Six

**TITLE SEVEN
BUSINESS**

No Code Relating to Business Has Been Established.

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TITLE EIGHT BUILDING

8.000 State Building Code Adopted. The City of Lowell hereby adopts the State Building Code per ORS Chapter 455 and will enforce said Code and the rules adopted thereunder. (Ord 227)

8.001 Uniform Building Code for Excavation and Grading Adopted. The City of Lowell hereby adopts the Uniform Building Code, Appendix Chapter 33, Excavation and Grading which has been adopted by the State of Oregon for optional use in municipalities. (Ord 227)

8.002 Building Permit Fees Established. Building Permit Fees will be established in accordance with ORS Chapter 455 and adopted by Resolution of the City Council. A public hearing is required before adoption of a Building Permit Fee Resolution. (Ord 227)

8.003 Uniform Code for Abatement of Dangerous Buildings Adopted. Adopted by Ordinance 255 unless indicated otherwise.

(a) The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published and copyrighted by the International Conference of Building Officials is hereby adopted in its entirety, except as modified in (b) below, as an ordinance of the City of Lowell and is hereafter referred to as the Dangerous Building Code. At least one copy of said code shall be maintained on file with the City of Lowell.

(b) The following modifications to the Uniform Code for Abatement of Dangerous Buildings are adopted:

(1) Section 201.1. The City Administrator shall be considered the building official for the purposes of administering the Dangerous Building Code and may delegate building official responsibilities to qualified persons under contract to the City to provide building inspection services or other qualified staff.

(2) Section 203. Citations for violation of provisions of this code may be issued by the City Administrator using the Oregon Uniform Citation and Complaint form.

(3) Section 403, Paragraph 1.3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry, but only if it and the property it occupies do not violate City nuisance code contained in **Sections 5.102 through 5.109** or minimum building maintenance code established in **Section 8.004.**

(4) Section 601.1. The board shall serve as the hearing body and/or examiner for all appeals. A quorum of the board shall not be required to hear an appeal.

(5) Section 601.2. A copy of the tape shall be made available, if requested by any party, upon payment of the established fee for tape recordings of City meetings.

(6) Section 601.3. Not adopted.

(7) Section 603. Subpoenas shall not be issued to compel attendance of witnesses or the production of evidence. It shall be the appellant's and City Administrator's responsibility to provide evidence and/or witnesses to support their respective positions before the hearing body.

(8) Sections 604.7.1, 604.7.2 and 604.7.3. Not adopted.

(9) Sections 605.2 through 605.6. Not adopted.

(10) Section 701.1. Change "misdemeanor" to "Class A violation".

(11) Section 701.3, Paragraph 3. The City may, in addition to any other remedy herein, cause the building to be repaired or demolished in accordance with established nuisance

abatement procedures contained in **Section 5.110**. All costs for such abatement, including administrative costs, shall be the personal responsibility of the property owner(s) and failure to pay such costs may result in a lien being placed on any property owned by said property owner(s). Abatement by the City and the resulting costs to be paid by the property owner are in addition to any fines levied as the result of a violation for failure to comply with a decision by the City Administrator or Appeal Board.

(12) Chapter 8. Not adopted.

(13) Chapter 9. Not adopted.

8.004 Minimum Building Appearance Standards. Adopted by Ordinance 255 unless otherwise indicated.

(a) All structures, including dwelling units, mobile or manufactured homes, commercial buildings, industrial buildings, accessory buildings to any of the foregoing uses, whether permanent or temporary, must adhere to the following minimum appearance standards so as not to create a condition of unsightliness when viewed from a public right-of-way or neighboring property. For the purposes of this section, a condition of unsightliness is a condition that would be considered by a reasonable person to be offensive or a visual blight when viewed from a public right-of-way or neighboring property.

(1) Roofs. Roofs for individual structures shall be covered entirely with commonly used roofing material of the same type and color. Use of temporary roof coverings such as plastic sheets or other such coverings is permitted for a period of no longer than 60 days.

(2) Siding. Sides of individual structures shall be covered entirely with commonly used siding material. Siding material must be covered with commonly used protective coatings. Such protective coatings must be maintained in a manner that is substantially free of peeling, cracking and weather damage.

(3) Entrances. For all entrances designed to have doors, including garages, such doors must be maintained in a manner in which they can fully close and fully open. Where screen or storm doors are installed the same requirement exists.

(4) Windows and Shutters. Glass windows must be maintained free of cracks and breaks. If operable shutters are installed, they must be maintained in a manner in which they can fully open and fully close. Decorative shutters must be correctly mounted to the side of the building. Temporary coverings for broken or inoperable windows, such as plywood, plastic sheeting or other such material, are permitted for a period of no longer than 60 days.

(5) Building Apertures. Building Apertures, including but not limited to chimneys, cornices, antennas, awnings, stairs and handrails shall be maintained in the manner designed and constructed so as not to create a condition of unsightliness.

(6) Fences. Fences shall be constructed of material commonly used for fencing. Fences must be maintained in a manner in which they do not lean or have gaps or openings not intended in the design and construction of the fence. Gates, if installed, must be mounted in a manner in which they can fully open and fully close.

(7) Buildings under construction. Buildings under construction are exempt from the above standards if a building permit has been issued for the construction, so long as the construction progresses at a reasonable rate. Should all construction cease under a specific building permit for a period of 90 days, the building must be brought into compliance with the above standards within an additional 60 days. Debris from construction activities must be controlled in a manner that does not create a condition of unsightliness.

(b) When a building is determined by the City Administrator to be in violation the standards established in paragraph (a), notice will be sent by first class mail to the property owner of

record. If the notice comes back as undeliverable, notice will be posted on the property. Said notice will include the following:

- (1) The address of the property.
 - (2) A detailed description of the violation.
 - (3) Corrective action that is necessary to correct the violation
 - (4) A deadline for taking corrective action which is no less than 10 days from the date the notice was postmarked or posted.
 - (5) Requirements for extension of the deadline for correcting the violation.
 - (6) Appeal rights.
 - (7) Potential penalties for non-compliance.
- (c) The City Administrator shall set the deadline for compliance and shall consider the nature of the violation and the amount of time it may take to come into compliance when setting such deadline. Under no circumstances shall a deadline be set less than 10 days for the notice of violation.
- (d) A notice of violation or established deadline may be appealed to the City Council. Such appeals must be in writing, clearly stating the basis for appeal and action requested of the City Council, and must be mailed or delivered to City Hall within 10 days of the date the notice was postmarked or posted. Any deadline established in the notice will be stayed upon submission of a letter of appeal until the City Council decides the appeal.
- (e) Failure to meet a deadline established by the City Administrator or upheld or modified on appeal by the City Council constitutes a Class B violation for which the City Administrator may issue a citation to the property owner. Each day the violation occurs beyond the deadline may be considered a separate violation.
- (f) The City Council may order abatement of the violation by the City following the established nuisance abatement process. The property owner would be responsible for paying all costs for abatement, including administrative costs, to the City. Failure to pay such costs would result in a lien being placed on the property. Payment of such costs would be in addition to any fines levied as a result of being issued a citation.

End of Title Eight

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**TITLE NINE
LAND USE AND DEVELOPMENT**

Lowell Land Development Code and Lowell Comprehensive maintained in separate binder.

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