

CHAPTER 3

PUBLIC IMPROVEMENTS

FOREST GROVE CODE

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CHAPTER 3

PUBLIC IMPROVEMENTS

SIDEWALKS

(Ord. 1973-1007; 1974-1043; 1976-27; 2013-04, 05/13/2013)

3.105**Sidewalk Construction Required.**

- (1) The owner of any property not having sidewalks shall agree to install and pay for sidewalks to be constructed in accordance with the specifications contained in Section 3.110 as a condition to the issuance of a building permit for a new structure, to expand the square footage of the main structure by at least 10 percent, or to expand the number of bedrooms when the permit valuation is more than \$10,000, except as provided in subsection (2). The structure for which the permit is issued shall not be occupied until the sidewalks have been constructed. (Ord. 2013-04, 05/13/2013)
- (2) The construction of sidewalks required in subsection (1) may be deferred upon execution by the property owner of a binding agreement in favor of the City requiring future sidewalk construction by, and at the expense of, the property owner and the owner's successors in interest. The agreement shall be in a form satisfactory to the City Manager or designee. This subsection is applicable only when one or more of the following conditions is found to exist by the City Engineer:
 - (a) Construction of sidewalks is not feasible due to limiting physical conditions.
 - (b) All property within 300 feet on each side of the side lot lines of the property for which the building permit is issued is fully developed and none of the fully developed properties have sidewalks.
 - (c) The property is located on 24th Avenue between Quince and Yew Streets or Yew Street north of the Burlington Northern Railroad tracks (Forest Grove Industrial Park).

3.110**Specifications.**

All sidewalks shall be constructed, reconstructed, repaired or maintained in accordance with reasonable specifications established by the City Engineer and approved by the City Manager. The specifications shall be kept on file in the office of the City Engineer, and copies shall be available for inspection by contractors and property owners desiring to construct sidewalks. The City Engineer, with the approval of the City Manager, is authorized to establish standards with regard to sidewalk grades, locations and widths, materials, and construction. Any contractor or property owner aggrieved by these standards may appeal to the Council by filing a written protest with the City Recorder.

3.115**Duty to Repair and Clear Sidewalks.**

It is the duty of an owner of land adjoining a street to maintain in good repair, and remove obstructions from, the adjacent sidewalk.

3.120**Liability for Sidewalk Injuries.**

- (1) The owner of real property responsible for maintaining the adjacent sidewalk shall be liable to any person injured because of the negligence of the owner in failing to maintain the sidewalk in good condition.
- (2) If the City is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty section 3.115 imposes, the person shall compensate the City for the amount of the damages paid. The City may maintain an action in a court of competent jurisdiction to enforce the provisions of this Section.

3.125**Repair of Sidewalks by Adjacent Property Owners.**

Whenever the City Manager or designee determines that a sidewalk is defective, notice of the nature of the defect and the location of the defective sidewalk shall be given to the adjacent property owner, together with a demand that the defect be repaired at the expense of the owner within 30 days of the date of the notice.

3.130**Delivery of Notice.**

The notice referred to in Section 3.125 shall be either delivered personally to the adjacent property owner or mailed by first class mail, postage prepaid, to the address of the owner of the adjacent property, as indicated on the last assessment roll, according to the records of the Department of Revenue and Taxation of Washington County.

3.135**Repair Period; Extension of Time.**

The owner of the property adjacent to the defective sidewalk shall cause the necessary repairs to be made in accordance with the standards and specifications of the City for sidewalk construction within 30 days from the date of personal service or the date of mailing of the notice to repair. The time within which the repairs are to be made may be extended by the City Manager or designee, for good cause shown, but the extension shall not exceed 30 days. Applications for time extensions shall be submitted in writing.

3.140**Costs of Repairs.**

All costs of repair of defective sidewalks shall be paid by the adjacent property owner.

3.145**Repair by City.**

If the required repairs to the sidewalk have not been completed within the time allowed, the City may make the necessary repairs and charge the cost, including reasonable engineering and inspection costs, to the adjacent property owner. The repair may be made either by the City or by a private contractor chosen by the City.

3.150**Notice of Repair Assessment.**

After costs of repairs made by the City have been calculated, the property owner shall be notified in the manner provided by Section 3.130.

3.155**Unpaid Costs as Lien.**

If the adjacent property owner fails to pay the costs of repair of the defective sidewalk within 30 days of the date of the notice declaring the cost of the repair, the cost shall be entered by the City Recorder in the docket of City liens and shall be collectible in the same manner as liens for public improvements.

EXCAVATION AND DEPOSIT PERMITS**3.205****Definitions.**

As used in Sections 3.205 to 3.230, the following words and terms mean as follows:

Pipeline. All types of underground installations, including cables and conduit.

Street. Any public street, public sidewalk or public place.

3.210**Deposits on Streets.**

- (1) No person shall deposit any article or material on any street without first securing a permit from the City Manager or designee and paying the required fee. The permit may be denied if the Manager or designee determines that the article or material will seriously impede traffic or unduly obstruct the view of motor vehicle drivers.
- (2) No permit is required if the article or material is being delivered, does not obstruct traffic or the vision of motor vehicle drivers, and does not remain on the street for more than three hours.
- (3) A holder of a permit to deposit any article or material on the street shall provide adequate safeguards, railing, lights and markers to warn persons passing by.
- (4) No deposit permit shall be effective for longer than 72 hours. (Ord. 2013-13, 01/13/2014)

3.215**Street Excavation.**

- (1) No person shall make or cause any excavation to be made on a street without first securing a permit from the City Manager and paying the required fee. An excavation permit is effective only for the project designated on the permit.
- (2) An applicant for an excavation permit shall comply with applicable provisions of Sections 3.225 to 3.230 when not in conflict with general specifications established by the State Highway Division.

3.220**Fees.**

The fees for a permit to deposit any article or material on the street or for an excavation permit shall be fixed by Council resolution, and may be amended in the same manner.

3.225

Qualifications of Applicant for Permit.

- (1) An applicant shall require all of its contractors engaged in the construction, installation, maintenance or repair of pipelines involving public rights-of-way, to carry a public liability and property damage policy written by a company authorized to do business in the State of Oregon in the amounts of \$100,000/\$300,000 public liability and \$100,000 property damage, naming the City and its officers as additional parties insured. The applicant shall furnish a certificate of such insurance to the City.
- (2) Before commencing work on underground construction and to guarantee the faithful performance of the permit, the applicant shall furnish the City with cash, a certified check or a surety bond, in the amount of the construction improvement, but not less than \$5000. The surety bond shall be issued by a company licensed to do business in Oregon and otherwise acceptable in all respects to the City. The surety bond furnished shall remain in force for a period of one year after the underground construction covered by the permit has been completely installed. Notification by the permit holder that the construction is complete shall commence the running of the one-year period for the surety bond. Public utilities as defined by ORS 757.005 are exempt from the requirements of this subsection.

3.230

Permit Holder's Duties.

- (1) No work which interferes with the public travel of a street shall commence until a plan for satisfactorily handling the traffic at the places concerned has been approved by the Chief of Police and City Engineer.
- (2) The contractor shall open only a reasonable amount of trench in advance of pipe laying, testing, and backfilling. Crossings of main streets and highways shall be kept open for traffic and private roads closed only for a time sufficient for excavation, pipe laying and backfillings with ample equipment and force.

- (3) All operations shall be conducted with the least possible interference to the traveling public and other users of the street. Barricades, fences, signs, lights, signals and flagpersons shall be provided where considered necessary and when ordered by the City Engineer to insure the safety of the public or those working on the project. Advance warning signs of design and wording satisfactory to the engineer shall be provided at strategic locations designated by the Engineer. Barricades and obstructions shall be protected at night by signal lights, which shall be kept burning from sunset to sunrise. The applicant is solely responsible for the adequacy and costs of protective barricades, signs, lights and other devices.
- (4) The applicant shall be responsible for all damage to bridges, culverts, retaining walls, pavements, surfacing, road beds and other street structures and facilities and underground installations caused by or resulting from the operations of the applicant or the applicant's contractors, subcontractors, agents or employees, or caused by the presence of the line or other facility within the street right-of-way. The applicant shall take such precautions and shall provide the protection necessary to avoid damage to other street structures and underground facilities, including the dirtying of surfaces as well as more serious damage. The Engineer shall determine whether the damage shall be corrected by repair, replacement or other treatment, or by compensatory payment. The amount of any compensatory damage shall be the amount the engineer determines to be adequate and reasonable.
- (5) The applicant shall be responsible for all damage to or interference with existing utilities such as telephone lines, power lines, gas mains and any and all other facilities which may now or later come within the street right-of-way in proximity to the applicant's lines or installations. The applicant shall indemnify and hold harmless the City and its officers and agents against any loss, injury or damage which the utilities may suffer by reason of the applicant's operations or by reason of the presence of the pipelines or installations in the street right-of-way.

- (6) Materials excavated in connection with the construction or maintenance of pipelines or underground facilities within the street right-of-way and not required for backfilling purposes shall be removed from the street right-of-way and disposed of in a manner satisfactory to the Engineer. All areas occupied by the pipeline operations within the street right-of-way shall be cleaned up and made free from litter and debris. If existing rock or gravel shoulders or surfacing become fouled with earth or other extraneous material by reason of the construction or maintenance of a pipeline or facility covered by the permit, the fouled rock and gravel shall be removed and replaced with clean, new rock or gravel of a kind, quality and size comparable in all respects with the original rock or gravel.
- (7) Excavation and fill requirements, including materials specifications, shall be those approved by the City Engineer and on file in the office of the City Engineer.
- (8) All hydrants, valve boxes and other facilities which appear at ground surface or extend above ground surface shall be placed at grades and locations which will avoid the creation of hazards to the traveling public and which will cause the least inconvenience to the maintenance of the street and street right-of-way.
- (9) The applicant shall have all temporary structures, rubbish and waste materials from an excavation operation removed at the expense of the applicant.

CURB CUT AND DRIVEWAY PERMITS**3.305****Permit Required.**

No person shall construct or install any driveway across any sidewalk, parking strip, curb, or in or upon any part of a street without first obtaining a permit from the City Engineer.

3.310**Application Requirements.**

- (1) An application for a driveway permit shall be made in writing to the City Engineer.
- (2) The application shall contain the following information:
 - (a) The location of the proposed driveway.
 - (b) A description of the property to be served.
 - (c) The kind or nature of business, if any, conducted upon the premises.
 - (d) The kind of material proposed to be used in the construction of the driveway.
 - (e) The width of the proposed driveway.
 - (f) Any other information required by the City Engineer.

3.315**Sidewalk.**

The sidewalk across any driveway shall conform to specifications set forth by the City Engineer.

3.320**Discontinuance of Driveway Use.**

When a property has a driveway that is discontinued or abandoned or the use of the property changes, the curbline shall be made to conform to applicable driveway provisions of the City within 60 days after discontinuance of the driveway use.

PUBLIC IMPROVEMENT PROCEDURES**3.405 Initiation of Proceedings and Engineer's Report.**

If the Council deems it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, water, 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 the City Engineer to make a survey and written report for the project and keep it on file in the office of the engineer. Unless the Council directs otherwise, the report shall contain the following:

- (1) 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.
- (2) Preliminary plans, specifications and estimates of the work to be done. However, where the proposed project is to be carried out in cooperation with any other governmental agency, the Engineer may adopt the plans and specifications and estimates of the agency.
- (3) An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable to it.
- (4) 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.
- (5) 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.

3.410 Council's Action on Engineer's Report.

After the City Engineer's report is filed, the Council may by motion approve the report, modify the report and approve it, require the engineer to supply additional or different information for the improvement, or it may abandon the improvement.

3.415 **Resolution Declaring Intention.**

If the Council approves the Engineer's report as submitted or modified, the Council shall, by resolution, declare its intention to make the improvement, provide the manner and method of carrying out the improvement, and direct the City Recorder to give notice of the improvement by one publication not less than 20 days prior to the public hearing in a newspaper of general circulation in the City, and by mailing copies of the notice by registered or certified mail to the owners expected to be assessed for the costs of the improvement.

3.420 **Contents of Notice.**

The notice described in Section 3.415 shall contain the following:

- (1) That the report of the City Engineer is on file in the office of the City Engineer and is subject to public examination.
- (2) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than 20 days following the first publication of notice, at which objections and remonstrances to the improvement, unless it is a sidewalk or emergency improvement, will be heard by the Council; and that if by 5:00 p.m. of the workday preceding the hearing date there is presented to the City Recorder valid written remonstrances of the owners of two-thirds of the land to be specially assessed for the improvement, then the improvement will be suspended for at least 12 months.
- (3) A description of the property to be specially benefited by the improvement, the owners of such property and the engineer's 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.

3.425 **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, by contract, by another governmental agency, or by a combination thereof.

3.430**Hearing.**

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

3.435**Call for Bids.**

The Council may direct the City Recorder to advertise for bids for construction of all or part of the improvement project. However, no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. If part of the improvement work is to be done under contract bids, the Council shall proceed in accordance with City and State law for public contracting. If the Council finds, upon opening bids for the work of the improvement, that the lowest responsible bid is substantially in excess of the Engineer's estimate, it may provide for holding a special hearing of objections to proceeding with the improvement on the basis of the bid and may direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the City.

3.440**Assessment Ordinance.**

- (1) If the Council determines the public improvement shall be made, when the estimated cost is determined on the basis of the contract award or City departmental cost or after the work is done and the cost has been actually determined, the Council shall decide whether the benefited property shall bear all or a portion of the cost. The City Recorder or other person designated by the Council shall prepare the proposed assessment for each lot within the assessment district and file the assessments in the appropriate City office.
- (2) Notice of the proposed assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed. The notice shall state the amount of assessment proposed on the property and fix a date by which time objections shall be filed with the City Recorder. An objection shall state the grounds for the objection.

- (3) At the hearing, the Council shall:
 - (a) Consider objections and may adopt, correct, modify or revise the assessment against each lot in the district according to special and peculiar benefits accruing to it from the improvement.
 - (b) By ordinance, spread the assessment.

3.445

Assessment Method and Alternative Methods of Financing.

- (1) The Council, in adopting a method of assessing the cost of the improvement, may:
 - (a) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived.
 - (b) Use any method of apportioning the same to be assessed as is just and reasonable between the properties determined to be specially benefited.
 - (c) Authorize payment by the City of all or part of the cost of an improvement when in the opinion of the Council the topographical or physical conditions, unusual or excessive public travel, or other character of the work warrants only partial payment or no payment of the cost by owners of benefited properties.
- (2) Nothing contained in this section shall preclude the Council from using other 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. If other means of finance are used, the Council may levy special assessments according to benefits derived to cover any remaining cost.

3.450

Notice of Assessment.

- (1) Within 10 days after the ordinance levying assessments has been passed, the City Recorder shall send a notice of assessment to each owner of assessed property by registered or certified mail and publish notice of the assessment once in a newspaper of general circulation in the City. The publication of notice shall be not later than 10 days after the date of the assessment ordinance.

- (2) The notice of assessment shall include the name of the property owner, a description of the assessed property, the amount of the assessment, and the date of the assessment ordinance, and shall state that interest will begin to run on the assessment and the property will be subject to foreclosure unless the owner either makes application to pay the assessment in installments within 10 days after the date of the publication of notice or pays the assessment in full within 30 days after the date of the assessment ordinance.

3.455**Lien Record and Foreclosure Proceedings.**

- (1) After the assessment ordinance is adopted, the City Recorder shall enter into the docket of liens a statement of the amount assessed on each lot, parcel of land or portion of land, a description of the improvement, names of property owners, and the date of the assessment ordinance. On entry into the lien docket, the amounts shall become liens and charges on the lots, parcels of land or portions of land that have been assessed for improvement.
- (2) Assessment liens of the City shall be superior and prior to all other liens or encumbrances on property insofar as State law permits.
- (3) Beginning thirty days after the date of the assessment ordinance, interest shall be charged at the rate set by Council on all amounts not paid. After thirty days from the date of the 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.
- (4) The City may enter a bid on property being offered at a foreclosure sale. The City bid shall be prior to all bids except those made by persons who would be entitled under State law to redeem the property.

3.460**Error in Assessment Calculation.**

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. If there has been an error, the City Recorder shall recommend to the Council an amendment to the assessment ordinance to correct the error. On enactment of the amendment, the City Recorder shall make the necessary correction in the docket of liens and send a corrected notice of assessment by registered or certified mail.

3.465**Supplemental Assessment.**

If an assessment is made before the total cost of the improvement is ascertained, and if the amount of the assessment is insufficient to defray expenses of the improvement, the Council may declare the insufficiency by motion and prepare a proposed supplemental assessment. The Council shall set a time for hearing objections to the supplemental assessment and direct the City Recorder to publish one notice of the hearing in a newspaper of general circulation in the City. After the hearing, the Council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of City liens as provided by Section 3.455. Notice of the supplemental assessment shall be published and mailed, and collection of the assessment shall be made, in accordance with Sections 3.455 and 3.460.

3.470**Rebates.**

On completion of the improvement project, if the assessment previously levied on any property is found to be more than sufficient to pay the cost of the improvement, the Council shall determine the excess and declare it by ordinance. When declared, the excess amounts shall be entered in the lien docket as a credit on the appropriate assessment. If an assessment has been paid, the person who paid it or that person's legal representative shall be entitled to payment of the rebate credit.

3.475**Abandonment of Proceedings.**

The Council may abandon proceedings for improvements made under this ordinance at any time prior to the final completion of the improvements. If liens have been placed on property under this procedure, they shall be canceled, and payments made on assessments shall be refunded to the person who paid them or to that person's legal representative.

3.480**Remedies.**

Subject to curative provisions of Section 3.485 and rights of the City to reassess as provided in Section 3.490, proceedings for writs of review and other appropriate equitable or legal relief may be filed as provided by State law.

3.485**Curative Provisions.**

- (1) An improvement assessment shall not be rendered invalid by reason of:
 - (a) Failure of the Engineer's report to contain all information required by section 3.405.
 - (b) Failure to have all the required information in the improvement resolution, assessment ordinance, lien docket, or notices required to be published and mailed.
 - (c) Failure to list the name of or mail notice to an owner of property as required by Sections 3.405 to 3.495.
 - (d) Any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect on the person complaining.
- (2) The Council shall have authority to remedy and correct all matters by suitable action and proceedings.

3.490**Reassessment.**

When an assessment, supplemental assessment, or reassessment for an improvement made by the City has been set aside, annulled, declared or rendered void, or its enforcement restrained by a court of this state or by a federal court having jurisdiction, or when the Council doubts the validity of the assessment, supplemental assessment, reassessment, or any part of it, the Council may make a reassessment in the manner provided by State law.

3.495**Apportionment of Liens.**

- (1) When a portion of a single tract or parcel of real property is partitioned or divided in accordance with applicable land use laws or when the ownership of a portion of a single tract of real property less than the entire tract is transferred or a portion is conveyed by a long-term lease that is at least ten years in duration, a lien against the real property in favor of the City shall be apportioned upon compliance with the terms of this Section.

- (2) Applications for the apportionment of liens shall be made to the City Recorder describing the tract to be segregated. The application must be completed by the owner, mortgagee, lienholder or tenant having an interest in the parcel. When the deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the parcel has not been recorded by the county clerk of the County in which the parcel is situated, the City shall not apportion the special assessment unless the applicant files a true copy of that deed, mortgage or instrument with the City.
- (3) The City Recorder shall compute the apportionment whenever the special assessment remains wholly or partially unpaid, and full payment or an installment payment is not due. The apportionment shall be calculated on the same basis as it was originally computed. The apportionment shall not be made unless each part of the original tract of land after the apportionment has a true cash value, as determined from a certificate of the county assessor or appraisal of a qualified appraiser, of 120 percent or more of the amount of the lien as applied to each tract apportioned. The valuation must be determined within one year prior to the date of the application.
- (4) When a special assessment is being paid in installments and a request to apportion is authorized, the remaining installments not yet due shall be prorated among the smaller parcels so that each parcel shall be charged with that percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment.
- (5) Apportionment of a special assessment under this section shall be done in accordance with a resolution of the Council. The resolution shall describe each parcel of real property affected by the apportionment, the amount of the assessment levied against each parcel, the owner of each parcel and such additional information as is required to keep a permanent and complete record of the assessments and payments.
- (6) An application shall not be processed until the applicant pays a fee to defray the costs of evaluating the application. The amount of the fee shall be set by Council resolution.

PARKS SYSTEMS DEVELOPMENT CHARGE

(Ord. 1990-07, 09/23/2007, Ord. 2012-01, 02/13/2012)

3.500**Purpose.**

A System Development Charge is enacted to recover a fair share of the cost for the acquisition and construction of parks facilities.

3.505**Definitions.**

For the purposes of Sections 3.500 – 3.530, the following words and terms mean as follows:

Building permit. Any permit issued by the Building Department for the installation or construction of a residential structure (such as multiple-family, manufactured dwelling units, etc.) under the City or State Building Code, except where such construction does not have the effect of increasing the number of dwelling units occupying the premises.

Parking acquisition and development. Purchase or lease of property for park purposes and all design and construction associated with the development or improvement of any park, including any equipment and development labor.

3.510**Charge Imposed.**

A System Development Charge for park acquisition and development is hereby imposed upon all new dwelling units developed within the City of Forest Grove. Such charge shall be established by the City Council under separate resolution. This fee is not covered by the annual fee adjustment.

3.515**Collection.**

1. A System Development Charge for park acquisition and development shall be paid prior to receiving a building permit or manufactured dwelling setup fee. If the project is a residential or multi-family dwelling, an application may be made to the City to pay the Parks System Development Charge in installment payments for a period not to exceed five years. Fifteen (15%) of the System Development Charge due shall be paid upon application submission. The terms of the financing arrangement shall be set by Council resolution.

2. An applicant for installment payments must demonstrate the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.
3. From that time the City Manager or designee has docketed a lien as provided in Section 2.300 of this Code upon the described property for the amount of the System Development Charge, together with interest on the unpaid balance, the lien may be collected in the same manner as allowed by law for collection of assessment liens.
4. The City Manager or designee is authorized to administer all aspects of the installment payment and financing of System Development Charges. This authority includes, but is not limited to:
 - (a) Providing final approval for projects seeking to participate in the installment payment and financing program.
 - (b) Providing application forms for installment payments that include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
 - (c) Documenting the amount of the System Development Charge, the dates on which the payments are due, the name of the owner and the description of the property.
 - (d) Entering a lien for the amount of the System Development Charge, together with interest on the unpaid balance, in the City's lien docket as provided in Section 2.300 of this Code. (Ord. 2012-01, 02/13/2012)

3.520**Reduced Charges.**

A developer may apply for a reduction of the System Development Charge by dedicating land or facilities to the City. City acceptance of the land or facilities in lieu of all or part of the assessed charge is based on the following criteria:

- (a) The land offered can be used for park purposes in a manner consistent with the Park and Recreation element of the Forest Grove Comprehensive Plan and any park or recreation plan or program adopted pursuant thereto, or can be sold by the City to obtain funds for such purposes, and

(b) The land is adequate in size, location and topography for the facilities necessary to satisfy the needs of the new residents, and

(c) The land will at all times be available and accessible to the general public in accordance with existing ordinances and regulations dealing with the use of public facilities, and

(d) The Forest Grove Parks and Recreation Commission approves the location and construction of all improvements on the land.

(e) The amount of fee reduction is based on Comprehensive Plan park standards considering amount of land and cost of facilities dedicated to the City, number of dwellings or population served, etc. Meeting neighborhood park standards for the proposed residential population may reduce fees up to one-half. Meeting neighborhood and community park standards may eliminate park system development charges.

In the event land is dedicated in lieu of the systems developments charge, an equal portion of the value of the land dedicated shall be apportioned to each of the lots created. As the building permits are issued and the systems charge collected for each lot, the value of the dedicated land apportioned to each lot shall be credited, without interest, to the person dedicating the land, or his heirs, or his assigns, until the total value is credited or five years have elapsed from the date building permits are made available from the City. In the event the total amount has not been credited within five years or before the development is completed, the residual balance shall be liquidated to the City.

3.525

Segregation of revenues.

All funds derived from the System Development Charge for park acquisition and development shall be kept in the "Park Acquisition and Development Capital Fund". This fund shall be segregated from other funds of the City and shall be used for no other purpose than the acquisition, design, construction or improvement of park facilities as defined in Section 3.505. (Ord. 2008-02, 05/12/2008)

3.530

FOREST GROVE CODE

3.625

3.530

Scope.

The System Development Charge for park acquisition and development provided for in this ordinance is separate from and in addition to any and all applicable taxes, assessments, charges, or fees otherwise provided by law.

3.600-3.625

SEWER SYSTEM DEVELOPMENT CHARGE (Repealed in its entirety, Ord. 1993-14, 11/22/1993). (Reenacted Ord. 2012-01, 02/13/2012, Section 3.705)

SANITARY SEWER AND SURFACE WATER MANAGEMENT

(Ord. 1991-10, 09/23/1991; Ord. 1991-14, 11/25/1991; Ord. 2012-01, 02/13/2012)

3.705 Sanitary Sewer and Surface Water Management Regulations, Rules, Fees, Methodology and Construction Standards.**Sewer System Development Charge.**

1. The orders, standards, specifications, work programs and performance criteria adopted annually by Clean Water Services (CWS), copies of which are on file in the City Recorder's Office, are governed by an Intergovernmental Agreement between the City of Forest Grove (City) and CWS. CWS rates apply in the City and are established annually by Council resolution.
2. A Sewer System Development Charge imposed by subsection (1) is payable upon issuance of a permit to connect to the sewer system. If the project is a residential or multi-family dwelling, an application may be made to the City to pay the Sewer System Development Charge in installment payments for a period not to exceed ten years. Fifteen (15%) of the System Development Charge due shall be paid upon application submission. The terms of the financing arrangement shall be set by Council resolution.
 - (a) An applicant for installment payments must demonstrate the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.
 - (b) From that time the City Manager or designee has docketed a lien as provided in Section 2.300 of this Code upon the described property for the amount of the System Development Charge, together with interest on the unpaid balance, the lien may be collected in the same manner as allowed by law for collection of assessment liens.

- (c) The City will remit to Clean Water Services a prorated amount of the Sewer System Development Charge collected through the installment payment program, according to the revenue share between Clean Water Services and the City in effect at the time the developer makes application to the City to pay the System Development Charge in installments.
- (d) The City Manager or designee is authorized to administer all aspects of the installment payment and financing of System Development Charges. This authority includes, but is not limited to:
 - i. Providing final approval for projects seeking to participate in the installment payment and financing program.
 - ii. Providing application forms for installment payments that include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
 - iii. Documenting the amount of the System Development Charge, the dates on which the payments are due, the name of the owner and the description of the property.
 - iv. Entering a lien for the amount of the System Development Charge, together with interest on the unpaid balance, in the City's lien docket as provided in Section 2.300 of this Code.

3. Surface Water Management System Development Charge. A Surface Water Management System Development Charge imposed by subsection (1) is payable upon issuance of a permit to connect to the surface water management system. If the project is a residential or multi-family dwelling, an application may be made to the City to pay the Surface Water Management System Development Charge in installment payments for a period not to exceed five years. Fifteen (15%) of the System Development Charge due shall be paid upon application submission. The terms of the financing arrangement shall be set by Council resolution.
- (a) An applicant for installment payments must demonstrate the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.

- (b) From that time the City Manager or designee has docketed a lien as provided in Section 2.300 of this Code upon the described property for the amount of the System Development Charge, together with interest on the unpaid balance, the lien may be collected in the same manner as allowed by law for collection of assessment liens.
- (c) The City retains the Surface Water Management System Development Charge.
- (d) The City Manager or designee is authorized to administer all aspects of the installment payment and financing of System Development Charges. This authority includes, but is not limited to:
 - i. Providing final approval for projects seeking to participate in the installment payment and financing program.
 - ii. Providing application forms for installment payments that include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
 - iii. Documenting the amount of the System Development Charge, the dates on which the payments are due, the name of the owner and the description of the property.
 - iv. Entering a lien for the amount of the System Development Charge, together with interest on the unpaid balance, in the City's lien docket as provided in Section 2.300 of this Code.

WATER CONNECTION CHARGE**3.800****Water Connection Charge.**

- (1) Each applicant for a new connection to the water system shall pay to the City a sum to cover the cost of the connection, including the meter, meter box, fittings and labor, as fixed by the Council by resolution. Title to all of the property installed by the City for the water connection and metering shall remain in the City.
- (2) Each applicant for a fire service connection to the water system shall pay to the City Manager a connection fee. The amount charged for the connection shall be fixed by the Council by resolution.
- (3) The connection shall not be made until the charges have been fully paid in advance.
- (4) Charges in this Section are not covered by the annual fee adjustment. (Ord. 1991-09, 09/09/1991; Ord. 1994-01, 02/14/1994)

WATER SYSTEM DEVELOPMENT CHARGE

Ord. 1994-01, 02/14/1994; Ord. 2012-01, 02/13/2012

3.801**Purpose.**

The purpose of the System Development Charge (SDC) is to impose a portion of the cost of capital improvements for water storage, transmission, treatment and distribution upon those customers of the City of Forest Grove who create the need for or increase the demands on capital improvements by connection to the water system. (Ord. 1994-01, 02/14/1994)

3.802**Scope.**

The SDC imposed by this Ordinance is separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development or based upon the ownership of property.

3.803**Definitions.**

As used in Sections 3.801 – 3.812, the following words and terms mean as follows:

Capital Improvements. Facilities or assets used for water storage, transmission, treatment and distribution.

Improvement Fee. A fee defined by ORS 223.299(2) for costs associated with capital improvements to be constructed after the date the fee is adopted.

Reimbursement Fee. A fee defined by ORS 223.299(3) for costs associated with capital improvements constructed or under construction on the date the fee is adopted.

System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage or connection to the system. “System Development Charge” includes that portion of a system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections to the water system. “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 costs of complying with requirements or conditions imposed by a land use decision.

3.804**Method of Establishing System Development Charge.**

System Development Charge shall be established or revised by Council resolution.

3.805

Authorized Expenditures.

- (a) Reimbursement fees shall be applied only to capital improvements for the City's water system including expenditures relating to repayment of indebtedness.
- (b) Improvement fees.
 - (1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provided new facilities. The portion of the improvements funded by improvement fees must be related to demands created by development.
 - (2) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 3.807.
- (c) Notwithstanding subsections (a) and (b) of this section, SDC revenue may be expended on the direct costs of complying with the provisions of this Ordinance; including the costs of developing SDC methodologies and providing an annual accounting of SDC expenditures.

3.806

Expenditure Restrictions.

- (a) SDC shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- (b) SDC shall not be expended for costs of the operation or routine maintenance of capital improvements.

3.807

Improvement Plan.

The City shall adopt a plan that:

- (a) Lists the capital improvements that may be funded with improvement fee revenues;
- (b) Lists the estimated cost and time of construction of each improvement;
- (c) Describes the process for modifying the plan.

3.808

Collection of Charge.

- (1) The System Development Charge is payable upon issuance of a permit to connect to the water system.
- (2) If connection is made to the water system without an appropriate permit, the System Development Charge is immediately payable upon the earliest date that a permit was required.
- (3) The City Manager or designee shall collect the applicable System Development Charge from the applicant prior to issuance of a permit that allows connection to the water system.
- (4) The City Manager or designee shall not allow a connection to the water system until the charge has been paid in full, or until provisions for financing installment payments for certain eligible projects has been made pursuant to subsection (e) of this section.
- (5) If the project is a residential or multi-family dwelling, an application may be made to the City to pay the Water System Development Charge in installment payments for a period not to exceed five years. Fifteen (15%) of the System Development Charge due shall be paid upon application submission. The terms of the financing arrangement shall be set by Council resolution.
 - (a) An applicant for installment payments must demonstrate the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.
 - (b) From that time the City Manager or designee has docketed a lien as provided in Section 2.300 of this Code upon the described property for the amount of the System Development Charge, together with interest on the unpaid balance, the lien may be collected in the same manner as allowed by law for collection of assessment liens.
 - (c) The City Manager or designee is authorized to administer all aspects of the installment payment and financing of System Development Charges. This authority includes, but is not limited to:
 1. Providing final approval for projects seeking to participate in the installment payment and financing program.

2. Providing application forms for installment payments that include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
3. Documenting the amount of the System Development Charge, the dates on which the payments are due, the name of the owner and the description of the property.
4. Entering a lien for the amount of the System Development Charge, together with interest on the unpaid balance, in the City's lien docket as provided in Section 2.300 of this Code. (Ord. 2012-01, 02/13/212)

3.809**Segregation and Use of Revenue.**

- (a) All funds derived from the SDC shall be segregated by accounting practices from all other funds of the City. SDC shall be used for no purpose other than those set forth in Section 3.805 of this Ordinance.
- (b) The City Manager shall provide the City of Forest Grove with an annual accounting, based on the City's fiscal year, showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account.

3.810**Administrative Review Procedure.**

- (a) Any customer or other interested person aggrieved by a decision made by the City Manager under this Ordinance relating to the expenditure of SDC revenues, may appeal the decision or the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision of the City Manager or the expenditure from which the person appeals.
- (b) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision must be filed within ten (10) days of the date of the decision.

- (c) The City Council shall determine whether the City Manager's decision or the expenditure is in accordance with this Ordinance and the provisions of ORS 223.249 to 223.314, inclusive, and may affirm, modify or overrule the decisions. If the City Council determines that there has been an improper expenditure of SDC revenues, the City Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.
- (d) A legal action challenging the methodology adopted by the City shall not be filed later than 60 days after the adoption of the SDC.

3.811**Prohibited Connection.**

No person, firm or corporation shall connect to the water system of the City unless the SDC has been paid.

3.812**Construction.**

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

PERMITTED USES OF THE PUBLIC WAY

(Ord. 2009-13, 11/23/2009; Ord. 2011-08, 07/11/2011)

3.900 Permitted Uses Of The Public Way.

The purpose of Code Sections 3.900 through 3.940 is to reduce congestion and unsightly clutter, to keep public rights-of-way clear for safe and convenient travel by pedestrians, and to protect the City from claims of liability based upon the placement of obstructions within the public way. Notwithstanding the applicable provisions of this ordinance pertaining to signs not adjacent to a premise, obstructions permitted by a city, county, regional, state, or federal agency are exempt from the provisions of this Code.

3.905 Definitions.

As used in Sections 3.900 – 3.940, the following words and terms mean as follows:

Bench – A privately-owned bench placed on a sidewalk, including any structure on which patrons of businesses and members of the public can sit.

Long-Term – A period in excess of 45 consecutive days.

Moveable – Not affixed to the pavement.

Obstruction - Vending machine, table, bench or other seating object; bike rack, flower box, trash receptacle, display of stock in trade, sign or any other object placed by a person in the public way.

Person – A natural person, corporation, partnership, or other entity regardless of form.

Public Way - Includes any public street, road, sidewalk, or public easement.

Sale – The exchange of any object of merchandise or food for any form of consideration, whether at retail or wholesale, regardless of whether a profit is made.

Sidewalk - Any public improved path for pedestrians within a public way.

Structure – Anything constructed or erected adjacent to, on, or above a public way.

Temporary – A period of less than 45 consecutive days.

Tourist-Oriented Business – A facility that offer a cultural, historical, recreational, educational, entertaining or food service activity, or a unique and unusual commercial activity whose major income or visitors is derived from motorists not residing in the immediate area of the business. Bed and breakfast establishments conforming to the requirements of Development Code Section 10.7.025 to 10.7.035 shall be included as tourist-oriented. (Ord. 2011-08, 07/11/2011)

Vending Machine - Any self-service box, container, storage unit or other dispenser used for the display and/or sale of any item, such as (but not limited to) beverages, newspapers, periodicals, magazines, books, pictures, photographs, advertising circulars, and records.

3.910**Obstructions To Public Passage.**

- (1) No person shall place an obstruction within the public way unless otherwise permitted under this or any other City Ordinance.
- (2) All obstructions shall comply with the following restrictions and conditions:
 - (a) No obstruction shall be placed:
 - i) Within three (3) feet of any marked pedestrian crosswalk as measured from the point of intersection between a crosswalk and the sidewalk curbing closest to the intended location of said object.
 - ii) Within five (5) feet of any intersecting driveway, alley or street.
 - iii) In a manner reducing the clear, continuous sidewalk width to less than five (5) feet.
 - iv) In a manner interfering with ingress or egress from private property or public facilities.
 - v) Such that the placement causes a hazard for pedestrian or vehicular traffic or obstructs the view of such traffic from the public way.
 - (b) No object or obstruction shall be attached in any way to a fire hydrant or other emergency equipment, traffic signal controller, traffic sign, light pole, utility pole, or street tree.
 - (c) Temporary obstructions shall be removed by the expiration date on the permit.

- (d) Other than signs, no commercial advertising shall be permitted on long-term obstructions.
- (e) All objects shall be maintained by the owner of the object at all times, in a clean, neat and attractive condition and in good repair. The area around said object shall be kept free of debris and litter at all times.
- (f) No sign, awning or architectural features shall be located less than eight (8) feet in height as measured from the sidewalk surface.
- (g) A tourist-oriented business may have an offsite portable sign as provided by subsection (h) i) below or a city sign as provided by subsection (j) below. (Ord. 2011-08, 07/11/2011)
- (h) Temporary and portable signs within the public right-of-way shall be subject to the following provisions (Ord. 2011-08, 07/11/2011):
 - i) Each commercially or industrially-zoned property shall be permitted one portable sign, either on the premises or in the right-of-way located directly adjacent to the property to which the sign pertains. An additional portable sign be placed within right-of-way in front of any other property provided that the owner of the property where the sign is placed gives written permission for the placement of the sign. In no case shall there be more than one portable sign placed in the right-of-way in front of any property. Signs shall be professionally prepared, shall not be larger than six (6) square feet, shall contain no moving parts and shall not be lighted. Signs shall be removed at the close of business each day. Obstructions other than signs can be placed anywhere in the public way subject to the provisions of this Code. Portable signs are typically signs known as sandwich board signs.

- ii) During the time of a garage sale, one temporary sign shall be permitted per frontage in the right-of-way located directly adjacent to the property to which the sign pertains and up to two temporary signs may be placed anywhere within the public right-of-way consistent with the requirements of this ordinance. Said signs shall not exceed four (4) square feet in area, which are allowed from 6:00 a.m. on Friday to Sunday at 6:00 p.m. and must be removed promptly thereafter. Such signs are typically used for garage sales. No permit shall be required for such signs.
- iii) Up to two temporary signs during the time of sale, lease or rental of a lot or structure. The signs can be located anywhere in a residential, commercial or industrial zone district within the public right-of-way with each sign not exceeding six (6) square feet in size and 30 (thirty) inches in height. Said signs are allowed from 6:00 a.m. on Friday to Sunday at 6:00 p.m. and must be removed promptly thereafter. No permit shall be required for such signs.
- (i) Obstructions other than vending machines shall be located directly adjacent to the property to which the obstruction pertains.
- (j) Signs allowed for tourist-oriented businesses on streets under City jurisdiction
 - i) Not more than one sign is allowed per business.
 - ii) Only one sign shall be allowed on a street sign pole and more than one sign can be allowed on other poles.
 - iii) Said signs shall be approved, located and erected by the Public Works Director. (Ord. 2011-08, 07/11/2011).

- (3) In addition to the provisions of subsections (1) and (2) above, non-movable obstructions shall:
- (a) be located at least ten (10) feet as measured along the curb from any fire hydrant or other emergency equipment facility;
 - (b) be located at least three (3) feet from any traffic signal controller, traffic sign, light pole or utility pole.
 - (c) shall not be located over a utility vault, meter cover, manhole or access cover.

3.915**Location Permit.**

The Public Works Director is hereby authorized to review application(s) and issue/deny permit(s) for placement of obstruction(s) in the public way, upon a clear showing by an applicant of conformity with the provisions of Code Section 3.910. Permits for permanent obstructions shall be valid for one (1) year from the date of approval. Permits for temporary obstructions shall be valid for no more than 45 days from the date of approval. No more than two (2) temporary permits shall be issued per property per calendar year.

3.920**Objects To Be Removed Upon Notice.**

Any object placed within a public way shall be removable. Such object shall be removed immediately upon written notice from the Public Works Director or designee to the owner requiring the object's removal for safety reasons, for purposes of construction or maintenance activities by the City or other public agency, or because the object does not comply with the provisions set forth in Code Section 3.910.

3.925**Enforcement.**

The Public Works Director or designee shall have the authority to order or effect the removal of any object deemed to be an obstruction under this Code. The Public Works Director or designee shall also have the authority to order removal of any object, if its owner fails to comply with written notice of removal provided by the City or an order to enforce the provisions of this Code.

3.930

FOREST GROVE CODE

3.940

3.930

Responsibility.

Notwithstanding the provisions of Code Sections 3.115 and 3.120, any person locating, placing or installing any object within the public way shall be solely responsible for any damage or injury to persons or property caused thereby.

3.935

Penalty Imposed.

A person responsible for a violation of any provision(s) of this Code shall be subject to a civil penalty in the amount of not less than \$100 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation occurring in a two (2) year period starting from the issuance of the first notice of violation. The Public Works Director or designee may cite the violator into Municipal Court for said violations.

3.940

Permit Fee and Sign Costs.

- 1) The fee for a public way use permit described above shall be set by City Council resolution.
- 2) The annual fee for a tourist-oriented street sign described above shall be set by City Council resolution. (Ord. 2011-08, 07/11/2011)

REIMBURSEMENT DISTRICTS

(Ord. 2011-02, 01/24/2011)

3.10.005 Purpose.

The purpose of Chapter 3.10 is to provide the process and means by which a person who is required to make certain public improvements to serve their property may recover a portion of the cost of such improvements when the improvements benefit, within a specified time period, other properties.

3.10.010 Definitions.

The following terms are definitions for the purposes of this Chapter (Chapter 3.10).

1. City Engineer or Engineer means the person holding the position of Director of Public Works or such other officer, employee or agent designated by the Council or City Manager to perform the duties set out for the City Engineer in this Chapter.
2. City means the City of Forest Grove.
3. Person means a natural person, firm, partnership, corporation, association or any other legal entity, be it public or private and/or any agent, employee or representative thereof.
4. Applicant means a person who is required or chooses to finance some or all of the cost of a street, water or sanitary sewer or storm water improvement, which improvement is also available to serve or benefit property other than that of the applicant, and who in turn applies to the City for reimbursement of the expense of the improvement.
5. Street Improvement, Water Improvement, Sewer Improvement and Storm Water Improvement mean respectively:
 - a. A street or street improvement, including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public rights-of-way;
 - b. A water facility or water line improvement, including but not limited to, extending a water line to property (other than property owned by the applicant) so that water service can be provided for such other property without further extension of the line;

- c. A sanitary sewer , sewer line, or other facility improvement, including but not limited to extending a sewer line to property (other than property owned by the applicant) so that sewer service can be provided for such other property without further extension of the line; and
 - d. A storm water improvement, including but not limited to extending a storm water line to property (other than property owned by the applicant) so that stormwater disposal for such other property can be provided without further extension of the line; conforming with standards and specifications set by the City.
- 6. Public Improvement means (as appropriate) all capital facilities (including plant facilities) associated with water, sanitary sewer, storm water, street (including bicycle lanes), and/or sidewalk facilities or the undergrounding of public utilities.
 - 7. Reimbursement Agreement means the agreement between an Applicant and the City (as authorized by the City Council and executed by the City Manager) providing for the installation of and payment for public improvements within a Reimbursement District.
 - 8. Reimbursement District means the area determined by the City Council to derive a benefit from the construction of public improvements financed in whole or in part by an Applicant.
 - 9. Reimbursement Fee means the fee established by resolution of the City Council and required to be paid by persons within a Reimbursement District once they utilize the Public Improvement.
 - 10. Utilize means to use or benefit from a Public Improvement, to apply for a building or other permit which will allow for the use or increase in the use of a Public Improvement or to connect to a Public Improvement.

3.10.015 Application for a Reimbursement District.

1. Any Applicant who finances some or all of the cost of a Public Improvement available to provide service or benefit to property other than property owned by that person may, by written application filed with the City Engineer, request the City establish a Reimbursement District. The improvement(s) must be in a size greater than that which would otherwise ordinarily be required and must be available to provide service to property other than that owned by the applicant. Examples include (but are not limited to):
 - a. Full street improvements instead of half street improvements;
 - b. Off-site sidewalks;
 - c. Connection of street sections for continuity;
 - d. Extension of water lines; and
 - e. Extension of sewer lines.
2. All applications shall include the following:
 - a. A description of the location, type, size and cost of the Public Improvement eligible for reimbursement;
 - b. A map showing the properties to be included in a proposed reimbursement district;
 - c. The zoning for the properties;
 - d. The front or square footage of said properties (or similar data appropriate for calculating the apportionment of the cost of the improvement among the properties); and
 - e. A listing of the property(ies) owned by applicant.
All applications shall be accompanied by a fee in an amount sufficient to cover the cost of administrative review and notice required by this Chapter as established by City Council resolution.
3. In the event an application is submitted after the construction of the Public Improvement, the application shall also include information as to when the City accepted the Public Improvement as well as the actual cost of the improvements, evidenced by receipts, invoices or other similar documents. Until receipt of said information, the affected application will be deemed incomplete.

4. In the event an application is submitted prior to the construction of the improvements, the application shall be accompanied by an estimate of the cost of the improvements as evidenced by bids, projections, or similar data. The application shall also include the estimated date of completion of the public improvement(s). Until the receipt of said information, the affected application will be deemed incomplete.
5. An application may be submitted at any time prior to the installation of the Public Improvement but in no event later than 180 days after acceptance of the improvement for which reimbursement is sought, unless the City Engineer, in his/her sole discretion waives this requirement.

3.10.020**City Engineer's Report.**

The City Engineer shall review the application and other material submitted therewith and prepare a written report for the Council which will address (to the extent relevant) the following factors:

1. Whether the Public Improvement for which reimbursement is sought has capacity sufficient to allow use thereof by property other than property owned by the applicant;
2. The area proposed to be included in the reimbursement district;
3. The actual or estimated cost of the improvements within the area of the proposed Reimbursement District and the portion thereof for which the applicant should be reimbursed;
4. A methodology for allocating the cost among the parcels within the proposed district and, where appropriate, defining a "unit" for applying the Reimbursement Fee to property which may be partitioned, subdivided or otherwise modified at some future date. The methodology should include consideration of the cost of the improvement(s), prior contributions by property owners, the value of the unused capacity, rate-making principles associated with the financing of public improvements, and such other factors as deemed relevant by the City Engineer;
5. The amount to be charged by the City for administering the Agreement, to be fixed by City Council and included in the resolution approving and forming the Reimbursement District. The fee is due and payable to the City at the time the Reimbursement Agreement is signed;

6. The period of time that the right to reimbursement exists if that period is less than ten (10) years; and
7. Whether the street, water and sewer improvements will meet or have met City standards.

3.10.025

Amount to be Reimbursed.

1. The potential amount of the reimbursement is limited to the following:
 - a. The costs of construction;
 - b. Engineering (including surveying and inspection) costs in an amount not to exceed fifteen (15%) percent of the construction costs;
 - c. Off-site right-of-way purchase costs, limited to the reasonable market value of land or easements purchased by the applicant from third parties to complete off-site improvements;
 - d. Financing costs associated with the improvement to the extent the financing costs are not attributable to the applicant's property or project; and
 - e. Legal and other expenses incurred by the applicant to the extent said expenses relate to the preparation and filing of the application, the preparation of the Report required by 3.10.020 and the hearing process set out in 3.10.030 and 3.10.035.
2. Regardless of amount or category, costs reimbursable or eligible for traffic impact fee credits or systems development charge credits which cannot be clearly documented or which are attributable to the applicant's property or project are not reimbursable.
3. By submitting an application that seeks reimbursement of legal expenses, the applicant thereby waives any attorney/client or attorney work product privilege that may exist in attorney billing statements or records in support thereof.
4. A reimbursement fee shall be determined for all properties which fall within the proposed Reimbursement District, including applicant's; however, the applicant shall not be reimbursed for that portion of the fee representing the benefit to the applicant's property.
5. The applicant shall not be reimbursed for the portion of the reimbursement fee computed for property owned by the City or other governmental body.

3.10.030

Public Hearing.

1. Within a reasonable time after the City Engineer has completed the report required in 3.10.020, the City Council shall hold an informational public hearing in which persons impacted by the creation of the Reimbursement District shall be given the opportunity to comment thereon.
2. Notice of the hearing shall be given not less than 10 nor more than 30 days prior to the public hearing date. Notice shall be given to the applicant and all owners of property within the proposed District, with notification by certified mail, return receipt requested or by personal service. Notice shall be deemed complete as of the date notice is mailed or served; failure to receive actual notice of the hearing shall not invalidate or otherwise affect any action of the City relative to the creation of the Reimbursement District and/or the costs associated therewith.
3. Formation of a District does not result in an assessment or lien against property; as a result, the hearing is informational only and the District is not subject to termination as a result of remonstrances to the formation thereof. The City Council has the sole discretion, after the public hearing, to decide whether the District is to be formed or not. If a District is to be formed, a resolution approving and forming the reimbursement district shall be adopted.
4. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the City when the Council may modify the resolution to reflect the cost of the improvement(s).

3.10.035

City Council Action.

At the conclusion of the hearing, the City Council shall approve, reject or modify the recommendations contained in the City Engineer's Report and manifest its action in a resolution. If a Reimbursement District is established, the resolution shall include a copy of the City Engineer's report as approved or modified and specify that payment of the appropriate fee as determined by the Council for each parcel is a precondition to receipt of any City permit necessary for development of that parcel. If a reimbursement district is established it shall be deemed formed as of the date the Council adopts the resolution referred to in 3.10.030 above.

3.10.040 Reimbursement Agreement.

If the Council approves the City Engineer's Report and thereafter creates a District, the City Manager shall cause the creation of an Agreement between the Applicant and City containing (at a minimum) provisions relating to the following:

1. That the public improvement(s) will or do meet all applicable City standards;
2. The amount of the potential reimbursement the applicant can expect along with a caveat that the total amount of any reimbursement will not exceed the actual cost of the public improvement(s);
3. The annual fee adjustment, if any;
4. That the applicant will guarantee the quality of the public improvement(s) for a period of not less than twelve (12) months after the date of their installation;
5. That the applicant will defend, indemnify and hold the City harmless from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the District; and
6. That the applicant acknowledges the City is not obligated to collect the reimbursement fee from affected property owners.

The City may include other provisions as the City Council determines necessary to ensure compliance with this Ordinance.

3.10.045 Annual Fee Adjustment.

The City Council may, in its discretion, grant an annual adjustment to the amounts established as the Reimbursement Fee at the time of the hearing on the Engineer's Report. In the event such an adjustment is deemed appropriate, it shall be applicable to the fee beginning on the first anniversary of the date of the Council's approval of the application, be fixed and computed against the reimbursement fee as simple interest, and remain the same for each year the District exists.

3.10.050 Notice of Adoption of Resolution.

The City shall notify all property owners within the District (as well as the Applicant) of the adoption of the Resolution manifesting creation of the District. The notice shall include a copy of the Resolution, the date of its adoption and a short explanation of when the property owner would be obligated to pay the reimbursement fee, the amount thereof as well any if there will be any adjustments thereto.

3.10.055 **Recording the Resolution.**

The City Recorder shall cause notice of the formation and nature of the Reimbursement District to be filed in the office of the Washington County Recorder in order to provide notice to potential purchasers of property within the District of its existence. Failure to make such recording shall affect neither the legality of the resolution nor the obligation to pay any fee.

3.10.060 **Contesting the Reimbursement District.**

Any legal action intended to contest the formation of the Reimbursement District or fee must be filed, within sixty (60) days of the Council's hearing on the application consistent with the terms of ORS 34.010 to 34.100 (Writ of Review).

3.10.065 **Obligation to Pay Reimbursement Fee.**

1. A person applying for a permit related to property within a Reimbursement District shall pay to the City, in addition to all other applicable fees and charges, the Reimbursement Fee established by the City Council under the terms of this Ordinance if, within the time specified in the Resolution establishing the District, the person applies for and receives approval from the City for any of the following activities:
 - a. A building permit for a new building or a permit for an addition, modification, repair or alteration to an existing building exceeding 25% of the value thereof within any 12-month period (not due to damage or destruction of the building by fire or natural disaster). "Value" as used above means the amount shown on the County's Department of Assessment and Taxation for the building's Real Market Value;
 - b. Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under the Forest Grove Municipal Code in effect at the time of permit application;
 - c. Connection to or use of a water, sanitary sewer, storm water or street improvement, if the district is based on that improvement.
2. The obligation to pay the reimbursement fee arises and accrues as of the time property within the District utilizes the affected Public Improvement regardless of whether a person applies for and/or receives a permit connected with that utilization.

3. The City Council's determination of which properties shall be liable for payment of the fee is final. Neither the City nor any officer or employee of the City shall be liable for payment of any reimbursement fee or portion thereof as a result of this determination.
4. A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.
5. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement.
6. The right to reimbursement shall not extend beyond ten (10) years from the District's formation date, subject to renewal at the option of the Council for one additional ten (10) year period.

3.10.070**Public Improvements Become Property of the City.**

Public improvements installed pursuant to Reimbursement District agreements shall become and remain the sole property of the City. More than one public improvement may be the subject of a Reimbursement District.

3.10.075**Collection and Payment; Other Fees and Charges.**

1. Applicants shall receive all reimbursement monies collected by the City for the public improvements they install. Such reimbursement shall be delivered to the developer for as long as the Reimbursement District agreement is in effect. Such payments shall be made by the City within 90 days of receipt of the reimbursements monies.
2. The reimbursement fee is not intended to replace or limit any other existing fees or charges collected by the City.