

# City of Wilsonville

City Council Meeting

September 6, 2018



**AGENDA**

**WILSONVILLE CITY COUNCIL MEETING  
SEPTEMBER 6, 2018  
7:00 P.M.**

**CITY HALL  
29799 SW TOWN CENTER LOOP  
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr  
Councilor Susie Stevens

Councilor Kristin Akervall - Excused  
Councilor Charlotte Lehan

**CITY COUNCIL MISSION STATEMENT**

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

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**Executive Session is held in the Willamette River Room, City Hall, 2<sup>nd</sup> Floor**

- 5:00 P.M. EXECUTIVE SESSION** [25 min.]  
A. Pursuant to: ORS 192.660 (2)(e) Real Property Transactions  
ORS 192.660(2)(h) Legal Counsel / Litigation
- 5:25 P.M. REVIEW OF AGENDA** [5 min.]
- 5:30 P.M. COUNCILORS' CONCERNS** [5 min.]
- 5:35 P.M. PRE-COUNCIL WORK SESSION**
- A. SMART Transit Rider Rules (Brashear/Guile-Hinman) [20 min.] Page 4
  - B. Update to Water and Sewer System Development Charges ( Cole/Rodocker) [20 min.] Page 18
  - C. Park and Recreation Master Plan (McCarty) [20 min.]
  - D. Community Garden Parking Lot Contract Bid Award (Rappold) [5 min.]
- 6:40 P.M. ADJOURN**
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**CITY COUNCIL MEETING**

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Thursday, September 6, 2018 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on August 21, 2018. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered there with except where a time limit for filing has been fixed.

**7:00 P.M. CALL TO ORDER**

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

**7:10 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

**7:15 P.M. MAYOR'S BUSINESS**

- A. Upcoming Meetings

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**7:25 P.M. COUNCILOR COMMENTS**

- A. Council President Starr
- B. Councilor Stevens
- C. Councilor Lehan
- D. Councilor Akervall - Excused

**7:35 P.M. CONSENT AGENDA**

A. **Resolution No. 2687**

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A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Paul Brothers, Inc. For The Memorial Park Dog Park And Community Garden Parking Lot Project (Capital Improvement Project #9132).

B. Minutes of the, July 16, 2018; August 6, 2018 and August 20, 2018 Council Meetings. Page 51

**7:40 P.M. PUBLIC HEARING**

A. **Ordinance No. 818** - 1<sup>st</sup> Reading (*Legislative Hearing*)

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An Ordinance Of The City Of Wilsonville Repealing And Replacing Chapter 8 – Environment Of The Wilsonville Code And To Repeal Ordinance No. 482.

B. **Ordinance No. 826** - 1<sup>st</sup> Reading (*Legislative Hearing*)

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An Ordinance Of The City Of Wilsonville Adopting The 2018 Parks And Recreation Comprehensive Master Plan As A Sub-Element Of The City Of Wilsonville Comprehensive Plan, Replacing All Prior Parks And Recreation Master Plans, And Repealing Ordinance No. 625.

**8:20 P.M. CITY MANAGER'S BUSINESS**

**8:25 P.M. LEGAL BUSINESS**

**8:30 P.M. ADJOURN**

**INFORMATION ITEMS** – No Council Action Necessary.

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Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting: Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503) 570-1506 or [cityrecorder@ci.wilsonville.or.us](mailto:cityrecorder@ci.wilsonville.or.us).



## CITY COUNCIL WORK SESSION STAFF REPORT

<b>Meeting Date:</b> September 6, 2018	<b>Subject:</b> SMART Transit Rider Rules  <b>Staff Member:</b> Dwight Brashear, Transit Director; Amanda Guile-Hinman, Assistant City Attorney  <b>Department:</b> SMART/Legal	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> Consideration and review of proposed additions to Wilsonville Code Chapter 10 to include regulations for SMART transit riders.	
<b>Staff Recommendation:</b> N/A		
<b>Recommended Language for Motion:</b> N/A		
<b>Project / Issue Relates To:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUES BEFORE COUNCIL:

Council is being asked to review regulations for riders of South Metro Regional Area Transit (“SMART”). Currently, WC Chapter 10 only has a smoking prohibition at, in, or near a transit stop (WC 10.305). There are no other published passenger regulations explaining what is allowed and what is prohibited conduct on SMART vehicles and transit stops.

### EXECUTIVE SUMMARY:

City staff worked to create SMART transit rider rules under Chapter 10.600 and through 10.680. The purpose of the SMART transit ride rules and procedures are for the safety, convenience, and

comfort of the City's passengers and employees and for the protection, reservation, use and enjoyment of City property. The table below puts into perspective what other local governments have incorporated within their City code to ensure safety and protection of their transit system, passengers, and City properties:

City Transit Regulations	Regulation Description	Regulations Followed by
<b>No Smoking</b>	No person shall aboard City vehicle smoke an electronic cigarette, tobacco or any other substance.  (WC 10.305 currently prohibits smoking at, in, or within 20 feet of bus stops or shelters. Does not discuss e-cigarettes or smoking on a bus)	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Vacate Elderly and Disabled Priority Seating</b>	No person shall fail to vacate seats for use by individuals who are elderly or with disabilities.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol> <p>[All regulate this by transit operator or City employeee.]</p>
<b>Food and Beverages</b>	No person shall bring or carry aboard City Vehicle food or beverages, including alcoholic beverages, in open containers.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Animals</b>	No person shall bring aboard an animal that is not secured within a closed secure carrier, unless the animal is a Service Animal under the control of its handler.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Oversized Objects/Strollers</b>	No person shall bring or carry aboard a City Vehicle any package, article or object of a size which will block any aisle, stairway, or doorway on the City vehicle, unless such item is folded.	<ol style="list-style-type: none"> <li>1. Lane County</li> <li>2. Rogue</li> <li>3. TriMet</li> <li>4. Corvallis</li> <li>5. Sandy</li> </ol>
<b>Excessive Noise</b>	No person shall make excessive or unnecessary noise, within the City vehicle with the intent to cause inconvenience, annoyance or alarm to the public. Passengers must use earphones with any musical device	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>

<b>City Transit Regulations</b>	<b>Regulation Description</b>	<b>Regulations Followed by</b>
<b>No Littering</b>	No person shall discard, deposit, or leave any trash, debris, and offensive substance, solid or liquid waste in or upon a City vehicle.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Unacceptable Conduct</b>	No person shall assault in any degree, harass, intimidate, threaten, etc.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Weapons</b>	No person, except a Peace Officer or person with a valid concealed weapon permit, shall bring into or carry aboard a City transit vehicle, or bring into a shelter, any fire arm, knife (except a folding knife with a blade less than 3 ½ inches in length), any explosive device or material, or any other weapon.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Safety</b>	<p>No person shall extend any portion of his/her body through any door/window, block the aisles/doors and must keep feet on the floor.</p> <p>[Corvallis regulation-No person shall leave an unattended child under age 8, unless accompanied by a person 12 years or older.]</p>	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Attire</b>	<p>No person shall enter a City vehicle without shoes and clothing.</p> <p>[Both Corvallis and Lane County prohibit repulsive odor on clothing or in a person's possession]</p> <p>[Lane County has made an exception for infants who are held]</p>	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Rogue</li> <li>3. Corvallis</li> <li>4. Lane County</li> <li>5. Sandy</li> </ol>
<b>Damage to City Property</b>	No person shall damage, destroy, or vandalize City vehicle.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Lane County</li> <li>3. Rogue</li> <li>4. TriMet</li> <li>5. Corvallis</li> <li>6. Sandy</li> </ol>
<b>Canvassing or Solicitation</b>	No person shall canvas to collect money or sell or distribute anything, or solicit for any purpose, on any City transit vehicle without written authorization by the City's transit manager or his/her designee.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Corvallis</li> </ol>

City Transit Regulations	Regulation Description	Regulations Followed by
<b>Use of Transit System for Non-Transit Purposes</b>	No person shall enter or remain upon, occupy or use transit facility for purposes other than boarding, disembarking or waiting for a transit vehicle to arrive.  Person is in violation if they remain on facility property longer than necessarily required to wait for, board, or disembark a transit vehicle.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Sandy</li> <li>3. TriMet</li> <li>4. Corvallis</li> <li>5. Lane County</li> </ol>
<b>Transit Facilities Purpose</b>	No person shall use a transit vehicle for any purpose other than for transportation.	<ol style="list-style-type: none"> <li>1. Sandy</li> <li>2. Corvallis</li> <li>3. TriMet</li> </ol>
<b>Posting Notices</b>	Except as otherwise allowed by transit regulations, no person shall place, permit or cause to be placed any notice or advertisement on any transit vehicle.	<ol style="list-style-type: none"> <li>1. Cherriots</li> <li>2. Sandy</li> <li>3. Lane County</li> <li>4. Corvallis</li> </ol>

The proposed draft of WC 10.600 and through 10.680 will help ensure that passengers are respecting others and the City's property while on the City's public transportation system. In other words, if any violation is found, whether criminal or not, the City will be able to not only protect itself and its constituents, but will have a uniformed and clear enforcement process to regulate unacceptable behavior.

#### **EXPECTED RESULTS:**

Passengers and transit employees will have a safer and more enjoyable use of the City's transit system and City staff will have more clarity in the enforcement of City transit regulations.

#### **TIMELINE:**

The proposed WC 10.600 through WC 10.680 additions are scheduled for a first reading and public hearing on September 17, 2018 and a second reading on October 1, 2018. Rather than a 30-day period before the regulations become effective, SMART proposes an effective date of December 1, 2018 so that SMART can conduct outreach to the community to inform riders of the new regulations.

#### **CURRENT YEAR BUDGET IMPACTS:**

Although fines may be assessed under the proposed rules, fines are considered a last resort. SMART will seek compliance through education and communication with riders. As such, staff do not anticipate significant budget impacts as a result of the new regulations.

#### **FINANCIAL REVIEW / COMMENT:**

Reviewed by: SCole Date: 8/27/2018

#### **LEGAL REVIEW / COMMENT:**

Reviewed by: BAJ Date: 8/26/2018

**COMMUNITY INVOLVEMENT PROCESS:**

With an extended timeline for the effective date, SMART will undertake an education campaign to inform the community and its riders of the new regulations, if adopted. SMART will use several mediums to convey the information to the public, including the Boones Ferry Messenger, tabling at community events, and posting information onboard transit vehicles and at transit stations.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

SMART transit rider rules help to educate passengers by providing guidelines on how to access and use public transit in a safe way that is beneficial for all. The rules create a safer environment for transit employees by clarifying what is acceptable behavior when using the City's transit system. The City will now be able to enforce the rules in a way that is impactful to offenders with the opportunity to change objectionable behavior.

**ALTERNATIVES:**

Retain WC Chapter 10 as is.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

Attachment A: Proposed WC 10.600 through WC 10.680



# ATTACHMENT A

## **Transit Rider Rules**

### **10.600 Purpose.**

The Code and implementing procedures are adopted for the safety, convenience, and comfort of the City of Wilsonville South Metro Area Regional Transit (“SMART”) passengers and for the protection, preservation, use and enjoyment of City property.

### **10.605 Scope.**

This section sets out the rules governing conduct within and around the City of Wilsonville’s SMART Transit System.

### **10.610 Severability.**

If any section, paragraph, subdivision, clause, sentence, or provision of this title shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect, impair, invalidate, or nullify the validity of the remaining portions of the title.

### **10.615 Definitions.**

- (1) City. The City of Wilsonville, Oregon or the City Council of Wilsonville, Oregon or a designated representative of the City of Wilsonville, Oregon.
- (2) Electronic Smoking Device. An electronic or battery operated device that delivers vapors for inhalation. Electronic Smoking Device includes every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.
- (3) Emergency. A fire, actual or threatened serious physical injury to a person, or any apparent urgent medical need occurring on or in a SMART Transit Shelter or aboard a SMART Transit Vehicle.
- (4) Exclusion. A sanction administered to an individual for violation of this Section. An Exclusion prohibits that individual from entering or remaining on or in the SMART Transit System in whole or in part, for a specified duration.
- (5) Operator. A City employee responsible for operating any SMART Transit Vehicle.
- (6) Passenger. A person who is aboard a SMART Transit Vehicle or waiting for the next available SMART Transit Vehicle to such person’s destination, or person who enters a SMART Transit Shelter with the intent to utilize transportation on the next available SMART Transit Vehicle for such person’s destination.

(7) Peace Officer. A law enforcement official who is employed by the Clackamas County Sheriff's Office, a marshal, a City of Wilsonville police officer, a law enforcement official of the Oregon State Police, and any other person as may be designated by law.

(8) Qualified Exclusion. An exclusion which excludes a person from use of the SMART Transit System except for use for travel to and from medical and legal appointments, obtaining food, clothing and necessary household items, or for accessing any critical services.

(9) Service Animal. An animal recognized under the Americans with Disabilities Act (ADA) as a service animal, including a dog guide, hearing ear dog, or other service animal assisting an individual with a physical disability in one or more daily life activities including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair, or fetching dropped items. An animal which provides solely emotional support, well-being, comfort, or companionship is not a service animal.

(10) SMART Transit Shelter. All real property, structures, and personal property owned, possessed or occupied by the City, leased or licensed by the City, or devoted on an exclusive or nonexclusive basis to the use of the SMART Transit System and includes a structure provided along a transit route for the purpose of providing seating and/or while passengers wait for a transit vehicle.

(11) SMART Transit System. The property, equipment and improvements of whatever nature owned, leased, or controlled by the City to provide public transportation for passengers through SMART or to provide for movement of people, and includes any SMART Transit Vehicle and any SMART Transit Shelter.

(12) SMART Transit Vehicle. A City-owned bus, van, automobile or other vehicle used by SMART to transport passengers.

(13) Transit Dependent. A person who relies on public transit services instead of the private automobile to meet one's travel needs.

(14) Transit Director. The SMART Transit Director for the City or other City-designated authority charged with the administration and enforcement of these Standards.

#### **10.620 Regulations.**

(1) Smoking Prohibited. No person shall smoke tobacco or any other substance, including Electronic Smoking Device, in, or within 20 feet of a SMART Transit Vehicle or SMART Transit Shelter. To the extent this smoke free zone extends into any City street or public way, any and all occupants of any fully enclosed vehicle driving through this smoke free zone are exempted from the provisions of this section.

(2) Vacating Elderly and Disabled Priority Seating. The aisle-facing benches at the front of buses are for the use of disabled and senior citizen Passengers. Non-qualifying

Passengers must vacate seating upon request of the Operator.

(3) Food and Beverages: Any food or beverage brought aboard a SMART Transit Vehicle must be in a sealed container or grocery bag. No person shall consume food or alcohol on any SMART Transit Vehicle. Passengers on SMART Transit Vehicles may consume non-alcoholic beverages only from containers with snap-on or screw-on lids.

(4) Attire. All persons who enter a SMART Transit Vehicle or SMART Transit Shelter must be wearing shoes and clothing.

(5) Excessive Odor. No person shall board or remain on a SMART Transit Vehicle or enter or remain in a SMART Transit Shelter if the person, the person's clothing, or anything in the person's possession, emits a grossly repulsive odor that is unavoidable by other Passengers on the SMART Transit Vehicle or Shelter and which causes a nuisance or extreme discomfort to Passengers or Operator.

(6) Excessive Noise. No person shall make excessive or unnecessary noise, within the SMART Transit Vehicle with the intent to cause inconvenience, annoyance or alarm to the public, Operator, or a Peace Officer, or with a reckless disregard to the risk thereof.

(7) Audio Devices. Any audio devices, radio, or musical instruments on a SMART Transit Vehicle or in a SMART Transit Shelter operated by a person other than the Operator must only be audible through earphones to the person carrying the device.

(8) Littering and Spitting. No person shall discard or deposit any rubbish, trash, debris, or garbage near, in, or on a SMART Transit Shelter or aboard a SMART Transit Vehicle, except in proper waste disposal container. No person shall spit, defecate, or urinate near, in, or on a SMART Transit Shelter or aboard any SMART Transit Vehicle.

(9) Animals. No person shall bring or carry aboard a SMART Transit Vehicle or take into a SMART Transit Shelter any animal not housed in an enclosed carrying container, except:

(a) Service Animals. A person accompanied by a Service Animal or a person training a Service Animal, so long as the animal is under the control of its handler, housebroken and restrained by leash, harness or other device made for the purpose of controlling the movement of an animal. A Service Animal may be carried on its handler's person but may not occupy a separate seat.

(b) Police Dogs. A trained police dog accompanied by a Peace Officer.

(10) Flammable or Corrosive Substance. No person shall bring aboard a SMART Transit Vehicle or take into a shelter any flammable, combustible, explosive or corrosive (as those terms are defined in ORS 453.005) substance or device, except matches and cigarette lighters or factory-sealed household products. No person shall light any match or cigarette lighter or ignite any flame or ember within or around a SMART Transit Vehicle or SMART Transit Shelter.

(11) Display of Lights. No person shall light a flashlight, scope light, laser light, or other object that projects a flashing light or emits beam of light while inside a SMART Transit Vehicle, except in an Emergency.

(12) Canvassing or Solicitation. No person shall sell or distribute anything, solicit for any purpose, or canvass to collect money in or on any SMART Transit Shelter or aboard any SMART Transit Vehicle, unless authorized in writing by the Transit Director or designee pursuant to objective, content neutral standards and administrative procedures which shall be adopted by the Transit Director establishing the reasonable conditions on time, place and manner of activities based upon the magnitude of the interference of the activity upon the safe and efficient operation of the transit system.

(13) Posting Notices. Except as otherwise allowed by City regulations, no person shall place, permit or cause to be placed any notice or sign upon any SMART Transit Vehicle or SMART Transit Shelter without the City Manager's consent.

(14) Aimless Riding. No person shall remain on the SMART Transit Vehicle for longer than two (2) hours, unless the passenger's destination requires it. Passengers who do not seem to have a specific destination will be asked by the Operator to state their destination. Once stated, the Passenger will be transported to that destination. If the Passenger does not disembark the Operator will ask that the Passenger do so, unless the Passenger has a legitimate reason. Some legitimate reasons include:

- (a) Passenger got on the wrong bus;
- (b) Passenger missed the stop;
- (c) Passenger forgot something and had to return; or
- (d) Passenger got on near the end of a route and is waiting to ride in the direction the Passenger wishes to travel.

(15) Damaging or Defacing City Property. No person shall draw graffiti or any other writing on any part of the SMART Transit System; or in any manner damage, destroy, interfere with, or obstruct in any manner, the property, services or facilities of the City.

(16) Harassment. No person shall intentionally or recklessly harass or annoy another person by:

- (a) Subjecting such other person to offensive physical contact;
- (b) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
- (c) Otherwise violate ORS 166.065.

(17) Threatening or Offensive Language. No person shall intentionally or recklessly disturb, harass, or intimidate another person by means of threatening or offensive language or obscenities in a SMART Transit Vehicle in such a manner as to interfere with a passenger's use and enjoyment of the SMART Transit System.

(18) Weapon. No person, except a Peace Officer or person with a valid concealed weapon permit as stated in ORS 166.370 and 166.240, shall bring into or carry aboard a SMART Transit Vehicle, or bring into a SMART Transit Shelter, any firearm, knife (except a folding knife with a blade less than 3 ½ inches in length), any explosive device or material, or any other weapon.

#### **10.630 Prohibited Baggage/Packages.**

(1) Oversized Objects. No person shall bring or carry aboard a SMART Transit Vehicle any package(s) or object(s) of a size that will block any aisle or stairway upon the SMART Transit Vehicle. No person shall leave behind, or unattended, such package(s) or object(s) within, or around, any SMART Transit Vehicle or SMART Transit Shelter.

(2) Carriages and Strollers.

(a) Except while boarding or exiting a SMART Transit Vehicle, carriages or strollers must remain folded and infant child must be held while aboard a SMART Transit Vehicle.

(b) No person shall bring or carry a commercial shopping cart aboard any type of SMART Transit Vehicle.

(c) No person shall abandon a commercial shopping cart at a SMART Transit Shelter.

#### **10.640 Safety.**

(1) No person shall:

(a) Extend any portion of his or her body through any door or window of a SMART Transit Vehicle while it is in motion.

(b) Lie down on or across the seats of a SMART Transit Vehicle or SMART Transit Shelter.

(c) Place any object or substance on the seats of a SMART Transit Vehicle or SMART Transit Shelter that inhibits the proper use of such seats, or block or obstruct the use of the seats.

(d) In any manner hang onto, or attach himself or herself to any exterior part

of a SMART Transit Vehicle while the vehicle is resting or in motion.

(e) Impede or block the free movement of others within a SMART Transit Shelter or SMART Transit Vehicle.

(f) Interfere, in any manner, with the safe operation or movement of any SMART Transit Vehicle.

(g) Activate the “Emergency Exit” or alarm device of a SMART Transit Vehicle, except in an Emergency.

(h) Throw, toss, or kick any ball, or other object on or in a SMART Transit Shelter or aboard any SMART Transit Vehicle.

(i) Leave an unattended child under the age of seven (7), unless accompanied by a person twelve years (12) or older. A child between the ages of five and seven years old may ride the SMART Transit Vehicle without an adult present or waiting at the departure or arrival site, if the place of departure or arrival is a school and a waiver of responsibility form has been submitted by the child’s parent or legal guardian.

(j) Talk to the Operator while the SMART Transit Vehicle is in operation, except for information facilitating the Passenger’s trip.

#### **10. 650 Specific Prohibited Use of a SMART Transit Shelter.**

(1) No person shall continuously occupy a SMART Transit Shelter for a time exceeding two hours.

(2) No person shall occupy a SMART Transit Shelter except for boarding, disembarking, or waiting for a SMART Transit Vehicle.

(3) No person shall climb upon any City stop sign, or stand upon any bench within the SMART Transit Shelter.

#### **10.660 Criminal Conduct.**

(1) It shall be a violation of this Ordinance for any person to engage in conduct in violation of any of the following laws if such conduct occurs within or in any way affects any SMART Transit Vehicle or SMART Transit Shelter:

(a) Assault in any degree in violation of ORS 163.160 through 163.185.

(b) Menacing in violation of ORS 163.190.

(c) Reckless endangering in violation of ORS 163.195.

- (d) Public indecency in violation of ORS 163.465.
- (e) Trespass in violation of ORS 164.245.
- (f) Disorderly conduct in violation of ORS 166.025.
- (g) Interfering with public transportation in violation of ORS 166.115.
- (h) Unlawful use of a weapon in violation of ORS 166.220.
- (i) Possession or delivery of controlled substances in violation of ORS 475.992.

### **10.670 Exclusions.**

(1) In addition to the laws of the State of Oregon, the City may exclude an individual from all or any part of the SMART Transit System for a violation of any provisions of WC 10.600 through 10.680 or a violation of any criminal law of the State of Oregon while on the SMART Transit System. The Exclusion period shall be determined on a case-by-case basis, but may be based upon:

(a) First Offense – Exclusion period not to exceed six (6) months, unless the offense poses an immediate and serious threat to the safety of the Passengers and City employees, then an Exclusion period up to one year or in excess of one year is permitted.

(i) An individual poses an immediate and serious threat to the safety of the Passengers when the individual has committed a sexual assault, committed an assault that resulted in serious injury or death, or used a weapon to injure another person while the offender is on the SMART Transit System.

(b) Second Offense - may be excluded for a period of more than one year up to and including permanent Exclusion.

(2) An individual with a disability shall not be issued a complete Exclusion from the SMART Transit System, unless the person engaged in violent, seriously disruptive or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operation of the SMART Transit System. Absent such finding, the Transit Director shall order a Qualified Exclusion to permit the individual with a disability to use the SMART Transit System for trips of necessity, including travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items or for accessing any critical services.

(3) An individual that is Transit Dependent shall not be issued a complete Exclusion from the SMART Transit System, unless the person engaged in violent, seriously disruptive or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operation of the SMART Transit System. Absent such finding, the Transit Director shall order a Qualified

Exclusion to permit the individual with a disability to use the SMART Transit System for trips of necessity, including travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items or for accessing any critical services. Any person asserting the right to a Qualified Exclusion on the basis of transit dependence shall have the burden of establishing transit dependence by a preponderance of the evidence.

(4) A Passenger excluded under this section of this code may not enter or remain upon any of the SMART Transit System during the period of Exclusion. An excluded passenger who enters or remains upon any part of the SMART Transit System is a trespasser and may be arrested and prosecuted for the crime of Criminal Trespass in the Second Degree (ORS 164.245). In addition, failure to abide by an Exclusion notice shall constitute a further violation for which the period of Exclusion may be extended by the Transit Director.

(5) Exclusion Notice.

(a) A written notice signed by the issuing party shall be given to the Passenger excluded from all or part of the SMART's Transit System. The written notice shall specify the reason for the Exclusion, duration of Exclusion, and the consequences for failure to comply with the written notice.

(b) Oral Exclusions shall be effective only for the route in progress at the time of the Exclusion, when made by the Operator. The Operator may direct a Passenger to leave a SMART Transit Vehicle, or direct a prospective Passenger not to board a SMART Transit Vehicle, if the Passenger is in violation of this Section.

(i) Oral Exclusions must be followed by a written explanation of how the Passenger was behaving and how the Passenger's actions unreasonably interfered with the operation of the SMART Transit System. Written notice by the Operator must be made no later than the end of that working day and be filed with the Transit Director as well as mailed to the Passenger, if the address is known.

(6) Exclusion Appeal.

(a) Process. No later than ten (10) days after an Exclusion notice has been issued, an excluded person may appeal in writing to the Transit Director for de novo review of the Exclusion and may petition the Transit Director to rescind, alter the places of Exclusion or reduce the duration of the Exclusion. An appeal shall contain a copy of the Exclusion notice; a request for a hearing or request for written review without a hearing; and a statement setting forth the reason why the Exclusion is/was invalid or otherwise improper.

(i) The Transit Director shall render a decision not later than ten (10) business days after receipt of appeal, unless the appellant has requested a hearing.

(b) Public Hearing. When a public hearing is requested by the appellant, the



public hearing shall be conducted by the Transit Director not later than ten business (10) days after receipt of the appeal, unless the appellant waives the right to have the hearing within the ten (10) business days. The Transit Director shall render a decision within fifteen business (15) days after the hearing.

(c) Public Hearing Process. The public hearing shall include presentation by City staff member designated by the Transit Director to provide documentation and testimony supporting the Exclusion, followed by the appellant's presentation of documents and testimony opposing the Exclusion. The Transit Director may question witnesses and review all documentation. A tape recording shall be made of the hearing which shall be made available to the appellant upon the appellant paying the cost of producing the tape recording. If the appeal raises a dispute of fact, the burden of persuasion shall be on the excluded person.

(d) The determination of the Transit Director shall be final.

#### **10.680 Enforcement.**

(1) Seating Change. Any Peace Officer, Operator, Transit Director and persons designated by the Transit Director has authority to require a seating change, pursuant to 10.620(2) or refuse entrance to an individual who violates any provision of the City Codes.

(2) SMART Transit Removal. The Transit Director and/or designee has the authority to remove any individual off of the SMART Transit System who violates any provision of the City Codes.

(3) Officer Citations. Any Peace Officer of the State of Oregon or City code enforcement officer is authorized to enforce regulations regarding transit rider regulations found in the Oregon statutes and/or in these transit rider regulations (WC 10.600 through WC 10.680).

(4) Citation. Any citations made will direct the violator to appear in the Municipal Court for the City of Wilsonville. The City Municipal Court will determine the appropriate fine amount, which will not exceed two hundred fifty dollars (\$250).



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> September 6, 2018	<b>Subject:</b> Update to Water and Sewer System Development Charges  <b>Staff Member:</b> Susan Cole, Finance Director; Cathy Rodocker, Assistant Finance Director  <b>Department:</b> Finance	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> N/A		
<b>Recommended Language for Motion:</b> N/A		
<b>Project / Issue Relates To:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Provide to the City Council a briefing on updating the Sewer and Water System Development Charges.

### EXECUTIVE SUMMARY:

The Sewer System Development Charge (SDC) methodology and project list was last comprehensively analyzed in 2006. At that time, the Sewer SDC for a single family residence was set at \$4,068. Between 2018 and 2006, the Sewer SDC has increased at an inflationary rate averaging 2.4% per year over the last 12 years, and is now at \$5,256.

The Water SDC methodology and project list was last comprehensively analyzed in 2000. The Water SDC for a single family residence was subsequently set at \$3,137 in 2001. Between 2018 and 2001, the Water SDC has increased at an inflationary rate averaging 5.4% per year over the last 17 years, and is now at \$5,995 for a 5/8” single family residence meter.

The City has engaged the FCS Group to comprehensively review both the Sewer and Water SDCs. This review includes evaluating the City’s various master plans and capital improvement plans, updating timelines and cost estimates, including evaluating the SDC eligibility of projects.

Staff anticipates that both the Sewer and Water SDCs will need to increase in order for the City to upgrade its infrastructure to accommodate growth.

The FCS Group will present preliminary information regarding their review, including estimates of what the new Sewer and Water SDCs may be.

**EXPECTED RESULTS:**

The results of FCS Group’s work will result in SDC charges at a level to enable the City to expand its Sewer and Water infrastructure to accommodate growth.

**TIMELINE:**

Staff are targeting an effective date of February 1, 2019, for any changes to the Sewer and Water SDCs. A 90 day review period is required prior new SDCs becoming effective. Based on this timeline, staff is targeting early October to bring final SDC recommendations to the City Council.

**CURRENT YEAR BUDGET IMPACTS:**

This work is combined in the budget with reviewing the operating rates of Sewer and Water, and is budgeted at approximately \$84,000 for all work products.

**FINANCIAL REVIEW / COMMENT:**

Reviewed by: SCole      Date: 8/27/2018

**LEGAL REVIEW / COMMENT:**

Reviewed by: BAJ      Date: 8/29/2018

**COMMUNITY INVOLVEMENT PROCESS:**

Prior to becoming effective, there will be a 90 day review period.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

N/A

**ALTERNATIVES:**

N/A

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENT:**

None.

# **CITY COUNCIL ROLLING SCHEDULE**

## **Board and Commission Meetings 2018**

**Items known as of 08/30/18**

### **September**

<b>DATE</b>	<b>DAY</b>	<b>TIME</b>	<b>EVENT</b>	<b>LOCATION</b>
9/10	Monday	6:30 p.m.	DRB Panel A - <b>CANCELLED</b>	Council Chambers
9/12	Wednesday	1:00 p.m.	Wilsonville Community Seniors, Inc. Advisory Board	Community Center
9/12	Wednesday	6:00 p.m.	Planning Commission	Council Chambers
9/17	Monday	7:00 p.m.	City Council Meeting	Council Chambers
9/24	Monday	6:30 p.m.	DRB Panel B	Council Chambers
9/26	Wednesday	6:30 p.m.	Library Board Meeting	Library

### **October**

<b>DATE</b>	<b>DAY</b>	<b>TIME</b>	<b>EVENT</b>	<b>LOCATION</b>
10/1	Thursday	7:00 p.m.	City Council Meeting	Council Chambers
10/8	Monday	6:30 p.m.	DRB Panel A	Council Chambers
10/10	Wednesday	1:00 p.m.	Wilsonville Community Seniors, Inc. Advisory Board	Community Center
10/10	Wednesday	6:00 p.m.	Planning Commission	Council Chambers
10/15	Monday	7:00 p.m.	City Council Meeting	Council Chambers
10/22	Monday	6:30 p.m.	DRB Panel B	Council Chambers
10/24	Wednesday	6:30 p.m.	Library Board Meeting	Library

### **Community Events:**

- 9/7** First Friday Films, 6:00 p.m. - 8:00 p.m. at the Library
- 9/12** SMART Walk at Lunch, noon - 12:30 p.m. at Mentor Graphics
- 9/13** Wilsonville Farmers Market, 4:00 p.m. - 8:00 p.m., at Sofia Park
- 9/14** Teen Advisory Board, 4:30 p.m. - 6:30 p.m. at the Library
- 9/15** Metro Hazardous Waste Collection Day, 9:00 a.m. - 2:00 p.m. at Wilsonville City Hall
- 9/19** SMART Walk at Lunch, noon - 12:30 p.m. at Noodles and Company
- 9/26** SMART Walk at Lunch, noon - 12:30 p.m. at Prographics Services Inc.
- 10/5** First Friday Films, 6:00 p.m. - 8:00 p.m. at the Library
- 11/2** First Friday Films, 6:00 p.m. - 8:00 p.m. at the Library

All dates and times are tentative; check the City's online calendar for schedule changes at [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us).



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> September 6, 2018	<b>Subject: Resolution No. 2687</b> Authorizing the City Manager to Execute a Construction Contract with Paul Brothers, Inc. for the Memorial Park Dog Park and Community Garden Parking Lot (CIP #9132).  <b>Staff Member:</b> Kerry Rappold, Natural Resources Manager  <b>Department:</b> Community Development	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> N/A	
<b>Staff Recommendation:</b> Staff recommends that Council adopt the Consent Agenda.		
<b>Recommended Language for Motion:</b> I move to approve the Consent Agenda.		
<b>Project / Issue Relates To:</b>		
<input checked="" type="checkbox"/> Council Goals/Priorities Multi-Modal Transportation Network	<input checked="" type="checkbox"/> Adopted Master Plan(s) Bicycle and Pedestrian Master Plan	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

A City of Wilsonville resolution approving the public bid process, accepting the lowest, responsible bidder, and awarding a construction contract to Paul Brothers, Inc. in the amount of \$636,538.70 for the construction of the Memorial Park Dog Park and Community Garden Parking Lot.

**EXECUTIVE SUMMARY:**

The parking lot project improvements include parking lot pavement, stormwater management facilities, utilities, lighting, landscaping, restroom pad, access roadway, bridge guardrails, and offsite transportation improvements.

The Memorial Park Master Plan, adopted December 2015, included the project as part of relocating the Dog Park and expanding the Community Garden. This project had funding approved in the City's adopted FY 2018-19 budget as the Memorial Park Master Plan Implementation (CIP No. 9132).

The City received three (3) bids by the August 23, 2018 deadline (see Attachment B for bid summary), of which Paul Brothers, Inc. submitted the lowest, responsive bid.

**EXPECTED RESULTS:**

Construct a new parking lot to serve the relocated Dog Park and existing Community Garden.

**TIMELINE:**

Construction is expected to begin in September 2018 with final completion scheduled for December 31, 2018.

**CURRENT YEAR BUDGET IMPACTS:**

Project #9132 is funded through Parks SDC fees. The adopted FY 2018-19 Wilsonville budget includes \$709,375 for design, construction, contract administration, and overhead for the project. In addition, a carryover of \$51,697 from FY 2017-18 is included in the total project budget.

**FINANCIAL REVIEW / COMMENT:**

Reviewed by: SCole Date: 8/29/2018

**LEGAL REVIEW / COMMENT:**

Reviewed by: BAJ Date: 8/29/2018

**COMMUNITY INVOLVEMENT PROCESS:**

In developing the Memorial Park Master Plan, the community involvement process included an electronic City-wide survey, stakeholder meetings, three open houses, and website communications. The public input informed the location of facilities in the park, which included relocating the Dog Park near the Community Garden.

During the design phase, the consultant team and staff developed a fact sheet about the project. Targeted mailings were sent to the surrounding neighborhood on Kolbe Lane, Schroeder Way, Rose Lane and Montgomery Way. These neighbors were invited to attend the Parks and Recreation Advisory Board and City Council meetings, or provide any comments to City staff in lieu of attending the meetings. The design team modified elements of the plan in response to neighborhood concerns.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

As described in the Memorial Park Master Plan, the project will provide parking for the relocated Dog Park and the existing Community Garden. Without the parking lot improvements, it would not be possible to relocate the Dog Park.

All reasonable efforts will be made to minimize the disruption to the surrounding neighborhood and park users caused by the parking lot construction. Construction phasing and sequencing will be used to maintain access to the Community Garden and minimize impacts to the residents in the area. Signage and other information will keep the public informed about the project.

**ALTERNATIVES:**

Three concept plans were developed for the parking lot project. The preferred concept was selected by the Parks and Recreation Advisory Board (PRAB) in February 2017. The project was approved by the Development Review Board (DRB) in January 2018. Throughout the planning and approval process, the City Council received updates in August and October 2017 and February 2018.

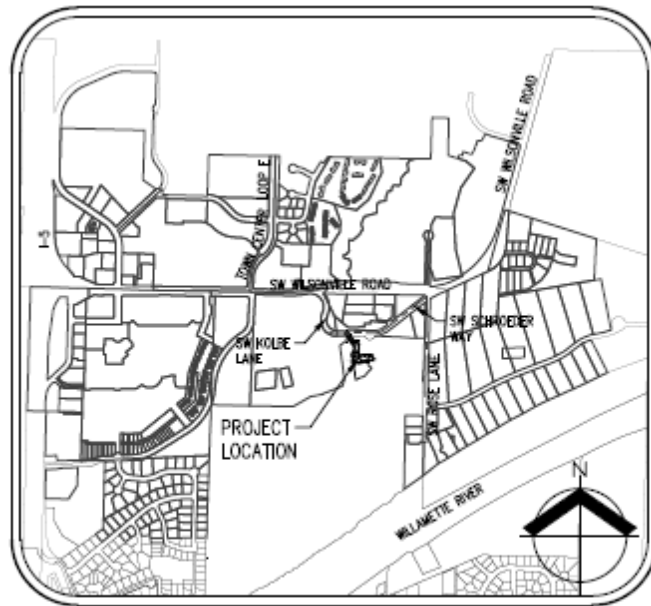
**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Project Location Map
2. Bid Summary
3. Resolution No. 2687

# Project Location



**VICINITY MAP**

1"=1000'



**SITE MAP**

1"=50'





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**BID SUMMARY**

**Project:** Memorial Park Dog Park and Community Garden Parking Lot

**CIP No:** 9132

**File No:** 16 10 001

**Bid Date:** August 23, 2018 @ 2:00 PM

Open Order	Bidder	Envelope Marked	First Tier Sub-Con.	Bid Security Amount	Bid Security Type	Proposal Complete	Addenda	Proposal Signed	Pre-Qualify	Bid Amount:	Rank
<i>Contractor Name</i>		<i>Y/N</i>	<i>Y/N</i>	<i>%</i>	<i>Check /Bond</i>	<i>Y/N - Why?</i>	<i>Y/N</i>	<i>Y/N</i>	<i>Y/N</i>		<i>DQ?</i>
--	Engineer's Estimate									\$503,000.00	
1	Paul Brothers, Inc.	Y	Y	10%	Bond	Y	Y	Y	Y	\$636,538.70	1
2	3 Kings Environmental, Inc.	Y	Y	10%	Bond	Y	Y	Y	Y	\$727,724.68	2
3	Kodiak Pacific Construction	Y	Y	10%	Bond	Y	Y	Y	Y	\$747,951.00	3

**RESOLUTION NO. 2687**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH PAUL BROTHERS, INC. FOR THE MEMORIAL PARK DOG PARK AND COMMUNITY GARDEN PARKING LOT PROJECT (CAPITAL IMPROVEMENT PROJECT #9132).**

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project #9132, known as Memorial Park Dog Park and Community Garden Parking Lot project (the Project); and

WHEREAS, the City solicited sealed bids from qualified contractors for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, three bids were received and opened on August 23, 2018, and Paul Brothers, Inc. submitted a bid of Six-hundred thousand thirty-six five-hundred thirty-eight dollars and 70 cents (\$636,538.70) for the Project, which was subsequently evaluated as the lowest responsive and responsible bid.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and Paul Brothers, Inc. submitted the lowest responsive and responsible bid.
2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a construction contract with Paul Brothers, Inc. for a stated value of Six-hundred thousand thirty-six, five-hundred thirty-eight dollars and 70 cents (\$636,538.70).
3. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6<sup>th</sup> day of September 2018, and filed with the Wilsonville City Recorder this date.

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Tim Knapp, Mayor

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

Attachments:

- A. Construction Contract with Paul Brothers, Inc.

**CITY OF WILSONVILLE  
CONSTRUCTION CONTRACT (CIP #9132)  
MEMORIAL PARK DOG PARK AND  
COMMUNITY GARDEN PARKING LOT**

This Construction Contract (“Contract”) for the Memorial Park Dog Park and Community Garden Parking Lot Project (“Project”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2018 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Paul Brothers, Inc.**, an Oregon corporation (hereinafter referred to as “Contractor”).

**RECITALS**

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

**AGREEMENT**

**Section 1. Contract Documents**

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: Contract Documents for the Memorial Park Dog Park and Community Garden Parking Lot Project, dated August 3, 2018, including Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2015 City of Wilsonville Public Works Standards; City of Wilsonville Special Provisions; Project Specific Special Provisions; Oregon Department of Transportation 2015 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision

of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

## **Section 2. Term**

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than December 31, 2018, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than November 30, 2018 and at Final Completion by December 31, 2018. See **Section 22** for the definitions of Substantial Completion and Final Completion.

## **Section 3. Contractor’s Work**

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

3.3. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

3.4. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

## **Section 4. Contract Sum, Retainage, and Payment**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor a Unit Price not to exceed amount of SIX HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED THIRTY-NINE DOLLARS (\$636,539) for performance of the Work (“Contract Sum”). Unit Prices are as more particularly described in the Contract Documents. Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

4.2. During the course of Contractor's performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 23**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 22**.

4.4. Except as provided in **Section 8.2**, the Contract Price includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

4.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor's unit prices, Contract Sum, and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the Contract Documents for the Memorial Park Dog Park and Community Garden Parking Lot Project, dated August 3, 2018, including Plans and Details bound separately; Contractor's Bid submitted in response thereto; 2015 City of Wilsonville Public Works Standards; City of Wilsonville Special Provisions; Project Specific Special Provisions; Oregon Department of Transportation 2015 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and in ORS 279C.570.

## **Section 5. Prevailing Wages**

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2018, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx). Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or

occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

### **Section 6. Filing of Certified Statement**

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

### **Section 7. Reports to Department of Revenue**

When a public contract is awarded to a nonresident bidder and the contract price exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract price, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

### **Section 8. City's Rights and Responsibilities**

8.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

8.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2018-19. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in Section 20.

### **Section 9. City's Project Manager**

The City's Project Manager is Kerry Rappold. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

### **Section 10. Contractor's Project Manager**

Contractor's Project Manager is Peggy Paul. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

### **Section 11. Project Information**

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of



newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

### **Section 12. Duty to Inform**

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

### **Section 13. Subcontractors and Assignments**

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

### **Section 14. Contractor's Responsibilities**

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state

taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract. This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

14.2. Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

14.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

14.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject to, the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll,

income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item not included in the Contract Sum, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor's Contract Sum is based.

14.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in

establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay for the services or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the

extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

## **Section 15. Subcontractor Requirements**

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 15.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 15.1.1 and 15.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

**Section 16. Environmental Laws**

16.1. Although the City is not aware of any of the following, before beginning construction, Contractor shall determine if there is any asbestos, lead paint, or other hazardous materials that will be removed or disturbed as a part of the Project. If disturbance or removal is required, Contractor will advise the City, in writing, and will provide the City with a detailed written supplemental Scope of Work concerning how such disturbance or removal will be accomplished and how materials, if any, will be disposed of, all in accordance with State and Federal environmental laws. Work required due to the finding of any such hazardous materials will require a written Change Order.

16.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service  
Defense, Department of  
Environmental Protection Agency  
Bureau of Sport Fisheries and Wildlife  
Bureau of Land Management  
Bureau of Reclamation  
Occupational Safety and Health Administration  
Coast Guard

Agriculture, Department of  
Soil Conservation Service  
Army Corps of Engineers  
Interior, Department of  
Bureau of Outdoor Recreation  
Bureau of Indian Affairs  
Labor, Department of  
Transportation, Department of  
Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of  
Forestry, Department of  
Human Resources, Department of  
Soil and Water Conservation Commission  
State Land Board

Agriculture, Department of  
Fish and Wildlife, Department of  
Geology and Mineral Industries, Department of  
Land Conservation and Development Commission  
National Marine Fisheries Service (NMFS)  
State Engineer  
Water Resources Board

LOCAL AGENCIES:

County Courts  
Port Districts  
County Service Districts  
Water Districts

City Council  
County Commissioners, Board of  
Metropolitan Service Districts  
Sanitary Districts  
Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

**Section 17. Indemnity and Insurance**

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession, practicing in the Portland metropolitan area. Contractor will re-perform any services not meeting this standard without additional compensation. Contractor's re-performance of any services, even if done at the City's request, shall not be considered as a limitation or waiver by the



City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

17.3. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

17.3.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

17.3.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

17.3.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

17.3.4. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which

requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

17.3.5. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

17.3.6. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

17.3.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

17.4. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 18. Bonding Requirements**

18.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

18.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

18.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

18.4. Completion Bond. Contractor shall also maintain a two (2) year Completion Bond, in a form acceptable to the City and from a surety acceptable to the City, in the full amount of the Contract Sum.

18.5. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

## **Section 19. Warranty**

19.1. Contractor shall fully warranty all Work, including but not limited to parking lot pavement, stormwater management facilities, utilities, lighting, landscaping, restroom pad, access roadway, and offsite transportation improvements, for a period of two (2) years from the date of Final Acceptance of all Work.

19.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities

of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

19.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

19.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

## **Section 20. Early Termination; Default**

20.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

20.1.1. By mutual written consent of the parties;

20.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

20.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

20.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

20.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

20.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 26**, for which Contractor has received payment or the City has made payment.

## **Section 21. Suspension of Work**

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

## **Section 22. Substantial Completion, Final Completion, and Liquidated Damages**

22.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and the relocated Dog Park and Community Garden premises, parking lot, stormwater management facilities, utilities, lighting, landscaping, restroom pad, access road, and offsite transportation improvements are fully functional and are ready to use with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before November 30, 2018, or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Section 22.3** and **Section 22.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

22.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

22.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of Three Hundred Dollars (\$300) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

22.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of December 31, 2018, or any written extension thereof granted by the City, Contractor shall pay the City Six Hundred Dollars (\$600) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

22.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Acceptance. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

22.6. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that preclude Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

### **Section 23. Contract Modification/Change Orders**

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed

Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

#### **Section 24. Dispute Resolution**

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

#### **Section 25. Access to Records**

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

#### **Section 26. Property of the City**

26.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Contractor may include Contractor's work in its promotional materials. Drawings may bear a disclaimer releasing Contractor from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

26.2. Contractor shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all Work performed by Contractor pursuant to this Contract without the express written permission of Contractor.

#### **Section 27. Notices**

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville  
Attn: Kerry Rappold  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Contractor: Paul Brothers, Inc.  
Attn: Peggy Paul  
8601 SE Revenue Road  
Boring, OR 97009

## **Section 28. Miscellaneous Provisions**

28.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

28.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

28.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

28.4. Adherence to Law. Contractor shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work shall be obtained and maintained throughout the term of this Contract.

28.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

28.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

28.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a



proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

28.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

28.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

28.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

28.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

28.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

28.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

28.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

28.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

28.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in

order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

28.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

28.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

28.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

28.20. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

28.21. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

**CONTRACTOR:**

**CITY:**

PAUL BROTHERS, INC.

CITY OF WILSONVILLE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

Employer I.D. No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Barbara A. Jacobson, City Attorney  
City of Wilsonville, Oregon

k:\dir\memorial park\dog park parking lot\construction\doc\ek mp dog park-garden pkg lot~paul bros (bj^).docx

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, July 16, 2018. Mayor Knapp called the meeting to order at 7:06 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Starr
- Councilor Stevens
- Councilor Lehan
- Councilor Akervall - Excused

Staff present included:

- Bryan Cosgrove, City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Daniel Pauly, Senior Planner
- Nancy Kraushaar, Community Development Director
- Mark Ottenad, Public/Government Affairs Director
- Zach Weigel, Capital Projects Engineering Manager

Motion to approve the order of the agenda.

**Motion:** Councilor Starr moved to approve the order of the agenda. Councilor Stevens seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

**COMMUNICATIONS**

A. Arts and Culture Strategic Plan Update Presented by Taylor Consulting

Public/Government Affairs Director Mark Ottenad introduced Siobhan Taylor and Una Loughran of Taylor Consulting. Ms. Taylor and Ms. Loughran presented on behalf of the Arts Action Alliance of Clackamas County, which is undertaking for the City a “Public Investment Strategy for Wilsonville Arts & Culture.” The project was funded by the Community Enhancement Program. The project seeks to develop a strategic plan for public investment in arts and culture, determine level of community support for arts and culture activities, and create tactics for developing resources to advance community support.

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Residents Laurie and John Shonkwiler spoke in support of an ordinance to be created banning plastic bags in the City of Wilsonville.

**MAYOR'S BUSINESS**

- A. Upcoming meetings were announced by the Mayor as well as the regional meetings he attended on behalf of the City.

**COUNCILOR COMMENTS**

- A. Council President Starr

Noted the following events:

- DRB Panel B meeting scheduled for the following week.
- Library Board meeting scheduled for next week.
- Wilsonville Farmers Market is open for the season each week on Thursday from 4:00 p.m. to 8:00 p.m. at Sofia Park.
- Wilsonville Rotary Summer Concerts take place Thursday evenings during the summer at Town Center Park.

- B. Councilor Stevens

Mentioned these upcoming activities:

- The Library will be celebrating its renovation on July 20, 2018 from 6:30 p.m. to 8:30 p.m.
- Friday, July 27, 2018 Coco will be featured in Movies in the Park.

- C. Councilor Lehan

Reminded the audience to check the City's website for happenings in the area and revealed the below events:

- August 10, 2018 Movies in the Park at Memorial Park.
- August 24, 2018 Movies in the Park at Memorial Park.
- August 22, 2018 50<sup>th</sup> Anniversary Block Party at Town Center Park.

**CONSENT AGENDA**

Ms. Jacobson read the titles of the Consent Agenda items into the record.

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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- A. **Resolution No. 2696**  
A Resolution Of The City Of Wilsonville Authorizing The Mayor To Sign An Intergovernmental Agreement With Metro For A Federal Fund Exchange Associated With The I-5 Pedestrian (And Bikeway) Bridge (Capital Improvement Project #4202).
- B. Minutes of the June 18, 2018 and July 2, 2018 Council Meetings.

**Motion:** Councilor Lehan moved to approve the Consent Agenda. Councilor Stevens seconded the motion.

**Vote:** Motion carried 3-1.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	No
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

**PUBLIC HEARING**

Ms. Jacobson read the title of Ordinance Nos. 823 and 824 into the record on first reading.

Mayor Knapp provided the public hearing format and opened the public hearing on Ordinance Nos. 823 and 824 at 8:02 p.m.

Senior Planner Daniel Pauly presented on both Ordinance Nos. 823 and 824. As required by statute it was announced the criteria for this application can be found on page 2 of attachment 2, for both Ordinance Nos. 823 and 824.

Mr. Pauly informed that the area being discussed is on the east side of Canyon Creek Road south, just south of the Aspen Meadows which is currently under construction. The subject property is approximately 2.21 acres in size. It is generally surrounded by single family developments. Renaissance at Canyon Creek is located to the west, single family homes to the south, and Boeckman Creek Canyon is located to the east.

It was stated that the subject property is part of the 1964 Bridle Trail Ranchetts subdivision, which was developed prior to Wilsonville’s incorporation as a city. Each lot in the subdivision was approximately 2 acres in size, and adoption of the current Comprehensive Plan Map included a residential density for this area reflecting the existing subdivision. Beginning in the mid-2000s, the City approved many of the Bridle Trail Ranchett lots for Comprehensive Plan Map amendments to increase the density from 0-1 to 4-5 dwelling units an acre (du/ac). Currently, the City has approved portions of 14 of the original 19 Bridle Trail Ranchetts lots for increased density.

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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The first and largest approved change in this area from 0-1 to 4-5 du/ac occurred in 2004 with the adoption of Ordinance No. 570 for Renaissance at Canyon Creek. This generally covers the area between Canyon Creek Road South and Canyon Creek Road. Findings supporting the change included the need for additional single-family homes in Wilsonville, the limited amount of vacant residential land within the City, and designations for higher residential density surrounding the subdivision. The timeline below depicts subsequent density changes made with similar findings:

- 2006** Ordinance No. 604 approved for the development of the 13-lot Cross Creek Subdivision.
- 2007** Ordinance No. 635 approved a 3-lot partition north of Renaissance at Canyon Creek.
- 2014** Ordinance No. 738 approved for 8-lots for a property whose owners had elected not to participate in the 2004 project and now desired to redevelop.
- 2016** Ordinance No. 790 approved the 14-lot Aspen Meadows subdivision to the immediate north of the subject property. At the time, the owner of the subject property did not elect to participate in the planning and development of Aspen Meadows.

It was noted that the applicant proposes to change the Comprehensive Plan Map designation for the subject property from 0-1 du/ac to 4-5 du/ac, consistent with previous Comprehensive Plan Map amendments for properties in the Bridle Trail Ranchetts subdivision.

When the City approved the first phase of Aspen Meadows, a reserve strip was required on the private street to prevent access to the subject property. At that time, the applicant had not secured a right to purchase the subject property and it was not anticipated that this would occur. Since the approval of Aspen Meadows, the applicant has secured the right to purchase the subject property and is now requesting that the reserve strip be removed in order to allow for the extension of the private street into the second phase of the Aspen Meadows subdivision. The extension of the private street will provide access for two additional lots and will terminate into a public street that will prevent any future extension of the private street.

The Development Code states that any required reserve strips are placed under the jurisdiction of the City Council. As such, the City Council will have to pass a resolution removing this reserve strip in Aspen Meadows in order to facilitate the connection of the residential private access drive proposed in the proposed subdivision. As an alternative, if the reserve strip is to remain, the applicant would be required to install a barrier preventing vehicular access across this reserve strip from the proposed subdivision. While technically feasible, this approach would make emergency vehicular access to this drive more difficult and would result in a less coordinated development pattern between the two phases of Aspen Meadows.

Staff answered clarifying questions for Council regarding street; size, access, and parking.

Council was provided with amended redline versions of Ordinance Nos. 823 and 824 for the record.

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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Ordinance No. 823 is updated with the following whereas clause:

WHEREAS, the Comprehensive Plan Map Amendment is contingent on the 5-lot subdivision proposed upon the property having access to and shared responsibility for the usable non-SROZ open space in Tract B of the “Aspen Meadows” subdivision; and

Number 2 of the ordains section of Ordinance No. 823 now reads as follows:

2. The official City of Wilsonville Comprehensive Plan Map is hereby amended by Comprehensive Plan Map Order DB18-0027, attached hereto as Attachment 1, from Residential 0-1 dwelling units per acre to Residential 4-5 dwelling units per acre contingent on submission to the City of a recorded agreement demonstrating, to the satisfaction of the City Attorney, the 5-lot subdivision will have access to and shared responsibility for the non-SROZ usable open space in Tract B of the plat of “Aspen Meadows”.

Ordinance No. 824 is updated with the following whereas clause:

WHEREAS, the Zone Map Amendment and associated Comprehensive Plan Map Amendment is contingent on the 5-lot subdivision proposed upon the property having access to and shared responsibility for the usable non-SROZ open space in Tract B of the “Aspen Meadows” subdivision; and

Number 2 of the ordains section of Ordinance No. 824 now reads as follows:

2. The official City of Wilsonville Zone Map is hereby amended, upon finalization of the annexation of the property to the City, by Zoning Order DB18-0028, attached hereto as Attachment 1, from the Residential Agriculture-Holding (RA-H) Zone to Planned Development Residential-3 (PDR-3) Zone contingent on finalization of concurrent Comprehensive Plan Map Amendment.

Applicant's representative Steve Miller of Emerio Design, LLC spoke in support of Ordinance Nos. 823 and 824.

Mayor Knapp invited additional speakers, seeing none he closed the public hearing at 8:43 p.m.

- A. **Ordinance No. 823** – 1<sup>st</sup> Reading  
An Ordinance Of The City Of Wilsonville Approving A Comprehensive Plan Map Amendment From Residential 0-1 Dwelling Units Per Acre To Residential 4-5 Dwelling Units Per Acre On Approximately 2.22 Acres Located At 28600 SW Canyon Creek Road South; The Land Is More Particularly Described As Tax Lot 6200, Section 13BD, Township 3 South, Range 1 West, Willamette Meridian, City Of Wilsonville, Clackamas County, Oregon. Scott Miller, Samm-Miller, LLC – Applicant For David Kersten – Owner.

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**Motion:** Councilor Lehan moved to approve Ordinance No. 823 on first reading with the redline version provided in front of Council. Councilor Stevens seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

**B. Ordinance No. 824 – 1<sup>st</sup> Reading**

An Ordinance Of The City Of Wilsonville Approving A Zone Map Amendment From The Residential Agriculture-Holding (RA-H) Zone To The Planned Development Residential-3 (PDR-3) Zone On Approximately 2.22 Acres Located At 28600 SW Canyon Creek Road South; The Land Is More Particularly Described As Tax Lot 6200, Section 13BD, Township 3 South, Range 1 West, Willamette Meridian, City Of Wilsonville, Clackamas County, Oregon. Scott Miller, Samm-Miller, LLC – Applicant For David Kersten – Owner.

**Motion:** Councilor Lehan moved to approve Ordinance No. 824 on first reading with the amended redline version as provided. Councilor Stevens seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

**NEW BUSINESS**

**A. Resolution No. 2699**

Ms. Jacobson read the title of Resolution No. 2699 into the record.

It was mentioned that there was discussion on the item during Work Session and all was understood by Council. Therefore, there was no further questions or discussion regarding the item.

**Motion:** Councilor Lehan moved to approve Resolution No. 2699. Councilor Starr seconded the motion.



**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

**CITY MANAGER'S BUSINESS**

No Report.

**LEGAL BUSINESS**

Brief discussion on process of approving items listed on the Consent Agenda.

**ADJOURN**

Mayor Knapp adjourned the meeting at 8:50 p.m.

Respectfully submitted,

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Kimberly Veliz, City Recorder

ATTEST:

---

Tim Knapp, Mayor

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, August 6, 2018. Mayor Knapp called the meeting to order at 7:01 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Starr
- Councilor Stevens - Excused
- Councilor Lehan
- Councilor Akervall

Staff present included:

- Bryan Cosgrove, City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Jeanna Troha, Assistant City Manager
- Nancy Kraushaar, Community Develop. Director
- Susan Cole, Finance Director
- Mark Ottenad, Public/Government Affairs Director
- Andy Stone, IT Manager
- Kimberly Rybold, Associate Planner
- Miranda Bateschell, Planning Manager
- Dan Pauly, Senior Planner

Motion to approve the order of the agenda.

**Motion:** Councilor Starr moved to approve the order of the agenda. Councilor Lehan seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

- |                         |         |
|-------------------------|---------|
| Mayor Knapp             | Yes     |
| Council President Starr | Yes     |
| Councilor Stevens       | Excused |
| Councilor Lehan         | Yes     |
| Councilor Akervall      | Yes     |

**COMMUNICATIONS**

- A. Clackamas County Public Health Division, Tobacco Retail Licensing

Dr. Dawn Emerick along with Clackamas County Public Health Division staff presented on the proposed framework for a county-wide Tobacco Retail Licensing (TRL) to prevent youth access to tobacco and nicotine products.

Dr. Emerick informed that TRL requires businesses located in the county to obtain an annual license to sell tobacco and other nicotine products, including electronic cigarettes. It is part of

**CITY OF WILSONVILLE**  
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Clackamas County's comprehensive strategy to prevent youth from using nicotine products and end the burden of tobacco-related disease and death.

It was stated that TRL is a tool that can be used to improve enforcement of existing federal, state, and local tobacco laws. TRL enables local jurisdictions to identify retailers, monitor their compliance with these laws, and enforce penalties if tobacco is sold to persons under the age of 21. TRL reduces illegal sales to minors through retailer education and enforcement of laws.

In closing the Clackamas County Public Health Division is requesting support for the TRL program from Council in the form of a resolution.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Pat Wolfram along with Richard (Dick) Spence spoke about the upcoming Relay for Life, Wilsonville Evening of Hope.

Mayor Knapp then read the Relay for Life proclamation listed on the agenda under Mayor's Business. The proclamation declared the 16<sup>th</sup> day of August, 2018 as "Wilsonville Relay for Life Day" and presented a proclamation to the Relay for Life Committee.

Mayor Knapp invited additional speakers.

Resident Laurie Shonkwiler spoke in support of banning single use plastic bags in the City of Wilsonville.

City Manager Cosgrove reported that staff had begun researching the topic of banning plastics bags.

**MAYOR'S BUSINESS**

A. Relay for Life Proclamation

The Mayor read a proclamation declaring the 16<sup>th</sup> day of August, 2018 as "Wilsonville Relay for Life Day" during Citizen Input & Community Announcements.

B. Upcoming meetings

Upcoming meetings were announced by the Mayor as well as the regional meetings he attended on behalf of the City. The Mayor also mentioned that the 30<sup>th</sup> Anniversary with the Kitakata delegation, which will be here at the end of August. It was shared that the group will be attending the August 20, Council meeting and will be in attendance at the Community Block Party.

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**COUNCILOR COMMENTS**

A. Council President Starr

Council President Starr shared the below:

- August 7, 2018 National Night Out.
- Final Rotary Concert featuring Cloverdayle on Thursday at 5:30 p.m.
- Wilsonville Farmers Market is held at Sofia Park on Thursdays beginning at 4:00 p.m.
- Congratulated Bren Lipsey on graduating with a Ph.D. from the University of Washington.

B. Councilor Lehan

Councilor Lehan informed the audience of the following:

- She he has been working along with staff on the panels for Beauty and the Bridge.
- Brewfest will be held at the Piazza located in Villebois on August 11, 2018.
- Farmer’s Market at Sofia Park occurs every Thursday night, now thru the end of the harvest season.

C. Councilor Akervall

Councilor Akervall stated:

- She attended the Fun in the Park event and appreciated the volunteers for their hard work.
- August 10 and 24 are the last two dates for the Movies in the Park this summer.

**CONSENT AGENDA**

Ms. Jacobson read the title of the Consent Agenda items into the record.

A. **Resolution No. 2704**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute The First Amendment To The Professional Services Agreement With Carollo Engineers, Inc. For Bid Support And Construction Engineering Services For The Water Treatment Plant Surge Tank Project (Capital Improvement Project #1111).

**Motion:** Councilor Lehan moved to approve the Consent Agenda. Councilor Starr seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**PUBLIC HEARING**

A. **Resolution No. 2697**

A Resolution Of The City Of Wilsonville Adopting A Concept Plan For The Basalt Creek Planning Area.

Ms. Jacobson read the title of Resolution No. 2697 into the record.

Mayor Knapp provided the public hearing format and opened the public hearing at 8:01 p.m.

Miranda Bateschell, Planning Manager along with Nadine Appenbrink from Fregonese Associates presented on the legislative public hearing on the Basalt Creek Concept Plan. Ms. Bateschell commented that the joint concept planning by two cities is a fairly unique process in the region.

The below project history timeline was made known:

**2004:** Metro brought Basalt Creek Planning Area into UGB

**2010:** Metro awarded CET Grant to fund Concept Planning

**2011:** Concept Planning Inter-governmental Agreement

**2011-2013:** Washington County, Metro, Tualatin, and Wilsonville with ODOT participating to define transportation spine

**2013:** Basalt Creek Transportation Refinement Plan adopted

**2014-2016:** Basalt Creek Concept Planning and Scenario Analysis

**2017-2018:** Central Subarea studies

**January 2018:** IGA executed to resolve the Central Subarea land use designation

**May 2018:** Central Subarea arbitration complete, 120-day adoption period begins

**July 2018:** Basalt Creek Concept Plan draft for review

Staff used the below bullet points to answer the question of what is a concept plan and then demonstrated how the Basalt Creek Concept meets all the goals and objectives.

What is a concept plan?

- Identifies a vision and guides future land use and transportation decisions for the planning area.
- Ensures area has capacity to contribute to local and regional land use and transportation goals.
- Ensures compliance with state land use goals, regional policies, and other plans, including existing transportation plans.
- Sets the framework for future development and outlines implementation for future:
  - urban services (transportation, water, sanitary sewer, and storm water systems);
  - public services (such as transit, parks, and open space), and
  - natural and cultural resources protection.

Staff recited the following guiding principles that were established early on in the process:

- Maintain and complement the Cities unique identities.
- Capitalize on the area's unique assets and natural location.

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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- Explore creative approaches to integrate jobs and housing.
- Create a uniquely attractive business community unmatched in the metropolitan region.
- Ensure appropriate transitions between land uses.
- Meet regional responsibility for jobs and housing.
- Design cohesive and efficient transportation and utility systems.
- Maximize assessed property value.
- Incorporated natural resource areas and provide recreational opportunities as community amenities and assets.

An overview of the implementation process and future steps is as follows:

- Adopt Concept Plan
  - July 11, 2018 Wilsonville Planning Commission – approved Res. LP18-0005
  - July 19, 2018 Tualatin Planning Commission – informational
  - July 23, 2018 Tualatin City Council Meeting – motion passed
  - Aug 6, 2018 Wilsonville City Council - adoption
  - Aug 13, 2018 Tualatin City Council Meeting - resolution
- Update Urban Planning Agreements (both cities, spring 2019)
- Update Comprehensive Plans (both cities by 5/2019)
- Review (update as needed) zoning/development code
- Annexation for Basalt Creek begins - at the option of property owner for both Tualatin and Wilsonville.

Following Council's discussion, Mayor Knapp invited public testimony.

The Mayor noted that Mr. Peter Watts provided a letter along with attachments to be added to the record.

Tom Re of Tualatin, appreciated the planners of both cities, especially Planning Manager Miranda Bateschell for the work on the Basalt Creek Concept Plan. Mr. Re agrees 100 percent on moving forward with the Basalt Creek Concept Plan.

Mayor Knapp invited additional speakers, seeing none he closed the public hearing at 8:36 p.m.

Mayor Knapp asked if there was any additional comments from the Council, City Manager and City Attorney. Hearing none, Mayor Knapp commented on the past and future process of the Basalt Creek Concept Plan.

Council appreciated planning staff for their responsiveness and thorough work completed during the entire process.

**Motion:** Councilor Lehan moved to approve Resolution No. 2697. Councilor Starr seconded the motion.

**Vote:** Motion carried 4-0.

**CITY OF WILSONVILLE  
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**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**B. Ordinance No. 818**

An Ordinance Of The City Of Wilsonville Repealing And Replacing Chapter 8 – Environment Of The Wilsonville Code And To Repeal Ordinance No. 482.

Ms. Jacobson read the title of Ordinance No. 818 into the record.

Staff sought a continuance of the public hearing for Ordinance No. 818 scheduled for August 6, 2018 to a date certain of August 20, 2018.

**Motion:** Councilor Starr moved to continue Ordinance No. 818 to August 20, 2018 meeting. Councilor Lehan seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**C. Ordinance No. 825**

Accessory Dwelling Unit Development Code Amendments.

Ms. Jacobson read the title of Ordinance No. 825 into the record.

Staff recommended that Council continue the public hearing for Ordinance No. 825 to a date certain of October 1, 2018.

**Motion:** Councilor Starr moved continue Ordinance No. 825 to October 1, 2018 meeting. Councilor Lehan seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**CITY OF WILSONVILLE  
CITY COUNCIL MEETING MINUTES**

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**NEW BUSINESS**

A. **Resolution No. 2701**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Proceed With Upgrading The City's Core Financial And Permitting Software To Products Within Tyler Technologies.

Ms. Jacobson read the title of Resolution No. 2701 into the record.

IT Manager, Andy Stone quickly briefed Council on Resolution 2701. The resolution authorizes staff to proceed with negotiating a new contract with the City's current provider, Tyler Technologies, in order to upgrade the City's core financial and permitting software.

**Motion:** Councilor Starr moved to approve Resolution No. 2701. Councilor Akervall seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

B. **Resolution No. 2698**

A Resolution Of The City Of Wilsonville Authorizing Removal Of A Non-Vehicular Access Reserve Strip Recorded On The 2017 Aspen Meadows Subdivision Plat.

Ms. Jacobson read the title of Resolution No. 2698 into the record.

Associate Planner Kimberly Rybold explained that when the City approved the first phase of Aspen Meadows, a reserve strip was required on the private street to prevent access to the subject property. At that time, the applicant had not secured a right to purchase the subject property and it was not anticipated that this would occur. Since the approval of Aspen Meadows, the applicant has secured the right to purchase the subject property and is now requesting that the reserve strip be removed in order to allow for the extension of the private street into the second phase of the Aspen Meadows subdivision. The extension of the private street will provide access for two additional lots and will terminate into a public street that will prevent any future extension of the private street.

Furthermore, it was disclosed that the Development Code states that any required reserve strips are placed under the jurisdiction of the Council. As such, the Council will have to pass a resolution removing this reserve strip in Aspen Meadows in order to facilitate the connection of the residential private access drive proposed in the proposed subdivision. As an alternative, if the reserve strip is



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to remain, the applicant would be required to install a barrier preventing vehicular access across this reserve strip from the proposed subdivision. While technically feasible, this approach would make emergency vehicular access to this drive more difficult and would result in a less coordinated development pattern between the two phases of Aspen Meadows.

**Motion:** Councilor Lehan moved to approve Resolution No. 2698. Councilor Starr seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**CONTINUING BUSINESS**

Ms. Jacobson read the titles of Ordinance Nos. 823 and 824 into the record on second reading.

Mayor Knapp requested confirmation that the proposed plat for Canyon Creek South was included in the record as it was not in the electronic packet. Staff informed that the exhibit that is being referred to is the of the tentative subdivision plat which is part of the Development Review Board (DRB) record of approval. Moreover, it is referenced as one of the exhibits to the staff report, therefore it is part of the complete record. Staff also confirmed that the plat was handed out to Council and added to the Council packet at the first reading of the ordinances on July 16, 2018.

Councilor Akervall commented that she reviewed the packet for tonight's meeting. However, since she was not in attendance at the first reading for Ordinance Nos. 823 and 824 she will abstain from voting on these items.

A. **Ordinance No. 823** - 2<sup>nd</sup> Reading

An Ordinance Of The City Of Wilsonville Approving A Comprehensive Plan Map Amendment From Residential 0-1 Dwelling Units Per Acre To Residential 4-5 Dwelling Units Per Acre On Approximately 2.22 Acres Located At 28600 SW Canyon Creek Road South; The Land Is More Particularly Described As Tax Lot 6200, Section 13BD, Township 3 South, Range 1 West, Willamette Meridian, City Of Wilsonville, Clackamas County, Oregon. Scott Miller, Samm-Miller, LLC – Applicant For David Kersten – Owner.

**Motion:** Councilor Lehan moved to adopt Ordinance No. 823 on second reading. Councilor Starr seconded the motion.

**Vote:** Motion carried 3-0-1.

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**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Abstain

**B. Ordinance No. 824 - 2<sup>nd</sup> Reading**

An Ordinance Of The City Of Wilsonville Approving A Zone Map Amendment From The Residential Agriculture-Holding (RA-H) Zone To The Planned Development Residential-3 (PDR-3) Zone On Approximately 2.22 Acres Located At 28600 SW Canyon Creek Road South; The Land Is More Particularly Described As Tax Lot 6200, Section 13BD, Township 3 South, Range 1 West, Willamette Meridian, City Of Wilsonville, Clackamas County, Oregon. Scott Miller, Samm-Miller, LLC – Applicant For David Kersten – Owner.

**Motion:** Councilor Lehan moved to adopt Ordinance No. 824 on second reading. Councilor Starr seconded the motion.

**Vote:** Motion carried 3-0-1.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Abstain

**CITY MANAGER’S BUSINESS**

No Report.

**LEGAL BUSINESS**

A. Oregon Department of Aviation letter to Senator Courtney and Representative Kotek dated July 27, 2018.

Council was provided a copy of Oregon Department of Aviation letter to Senator Courtney and Representative Kotek dated July 27, 2018.

Discussion ensued regarding the Oregon Department of Aviation (ODA) notification of intent to apply for a preliminary federal grant requesting consideration of discretionary funding over \$33 Million with the Federal Aviation Administration (FAA) on August 8, 2018 for a runway extension at Aurora State Airport.

Staff recommended that Mayor Knapp phone the mayor of Salem on the issue. It was also recommended by staff that Council make a motion directing staff to create a letter for Mayor

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Knapp to sign along with the board chair of Clackamas County and the mayor of Salem. The letter drafted would communicate Council's concerns over the proposed Aurora Airport expansion. If the other entities do not wish to be included in the letter and/or are not able to participate due to time constraints, Wilsonville would still proceed with their own letter.

**Motion:** Councilor Lehan moved to authorize the letter expressing the concerns expressed tonight and previously about impacts. Councilor Akervall seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

**ADJOURN**

Mayor Knapp adjourned the meeting at 9:18 p.m.

Respectfully submitted,

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Kimberly Veliz, City Recorder

ATTEST:

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Tim Knapp, Mayor

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, August 20, 2018. Mayor Knapp called the meeting to order at 7:05 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Starr - Excused
- Councilor Stevens
- Councilor Lehan
- Councilor Akervall

Staff present included:

- Bryan Cosgrove, City Manager
- Jeanna Troha, Assistant City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Nancy Kraushaar, Community Development Director
- Mark Ottenad, Public/Government Affairs Director
- Amanda Guile-Hinman, Assistant City Attorney
- Mike McCarty, Parks and Recreation Director
- Bill Evans, Communications & Marketing Manager
- Erica Behler, Recreation Coordinator
- Dominique Huffman, Civil Engineer
- Zach Weigel, Capital Projects Engineering Manager

Motion to approve the order of the agenda adding Resolution No. 2706 to the agenda under New Business following the Consent Agenda.

**Motion:** Councilor Stevens moved to approve the order of the agenda an adding Resolution No. 2706 to the agenda under New Business. Councilor Akervall seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

**CITY OF WILSONVILLE**  
**CITY COUNCIL MEETING MINUTES**

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None.

**MAYOR'S BUSINESS**

A. Reaffirmation of Sister-City Relationship

Mayor Knapp welcomed the City's Sister-City Kitakata, Japan delegation. First with an introduction in Japanese then in English.

Mayor Knapp shared that the Council is pleased and honored to welcome the delegation from the City's Sister-City of Kitakata, Japan, on the occasion of the 30<sup>th</sup> anniversary of the Kitakata-Wilsonville Sister-City relationship.

It was mentioned that the visit occurs during the same week that the City of Wilsonville celebrates its 50<sup>th</sup> Anniversary as an incorporated municipality.

Mayor Knapp further mentioned he visited the City of Kitakata in August, 2013 during the 25<sup>th</sup> Anniversary of the Kitakata-Wilsonville Sister-City relationship. Mayor Knapp proceeded to thank Mayor Endo and Mr. Karahashi for the hospitality bestowed upon the City of Wilsonville delegation during the August, 2013 visit.

Mayor Knapp spoke of the importance of the Sister-City program to both communities, and also to him and his family personally. The Mayor shared that he along with his spouse, Melodee hosted Kitakata exchange students in their home in 1994-95. Additionally, his daughter, Charlene, was part of the first Wilsonville student delegation on the Sister-City exchange program to visit Kitakata in 1994.

In closing, Mayor Knapp stated the City looks forward to furthering the Sister-City relationship with Kitakata and to celebrating the next 30 years of developing mutual understanding and good will among the cities.

The delegation then introduced themselves to Council.

**The following members of Kitakata Sister City Delegation attended the Council meeting:**

**Kitakata City**

Chuich Endo, Mayor

Kazuei Sato, Chairman of City Council

Susumu Saito, Council Secretary General

Takashi Sato, Planning & Coordination Division Assistant Manager

Katsuhiro Inomata, Planning & Coordination Division General Manager for Secretary Public Relations Office

Masanori Tomita, Lifelong Learning Division Chief for Boat City Promotion Section

Makoto Tabem, Lifelong Learning Division Manager

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**Aizu Kitakata International Association and Aizu Kitakata Chamber of Commerce**

Koichiro Karahashi, President

Tsuneyoshi Kazama, Vice President

Tomijiro Sato, Vice President

Kene Uriu, Auditor of AKIA and Managing Director of AKCC

Jiro Sato, Leader of U.S.-Japan Committee

Mayor Knapp read the Reaffirmation of Sister-City Relationship proclamation. Following the reading, Mayors Knapp and Endo along with Bev Schalk of the Wilsonville Sister City Association and Koichiro Karahashi of the Aizu Kitakata International Association signed the proclamation.

After the signing of the proclamation, Mayor Endo gave a speech on his appreciation of the Sister-City relationship between Wilsonville and Kitakata.

Council then took a break for the tree planting ceremony. The tree planting ceremony was to take place after the meeting however, due to a longer than anticipated signing ceremony the tree planting was moved up in the order of agenda to ensure daylight during the planting.

After the tree planting ceremony Council and the delegation returned to exchange gifts.

**COUNCILOR COMMENTS**

A. Councilor Stevens - No comment.

B. Councilor Lehan

Reminded the audience of the Community Block Party and the City's 50<sup>th</sup> Anniversary celebration to be held Wednesday, August 22, 2018 from 5:00 p.m. to 8:00 p.m. in Town Center Park.

C. Councilor Akervall - No comment.

**CONSENT AGENDA**

It was noted that City Attorney Jacobson had to leave the meeting unexpectedly. Hence, Mr. Cosgrove read into the record all remaining resolution and ordinance titles.

Mr. Cosgrove read the title of the Consent Agenda items into the record.

A. **Resolution No. 2705**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With Kittelson & Associates, Inc. For Design And Construction Engineering Services For The 2018 Street Maintenance Of Wilsonville Road And Boones Ferry Road (Capital Improvement Project #4104 And #4118).

**CITY OF WILSONVILLE  
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**Motion:** Councilor Lehan moved to approve the Consent Agenda. Councilor Akervall seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

**NEW BUSINESS**

Mr. Cosgrove read the title of Resolution No. 2706 into the record.

- A. **Resolution No. 2706**  
A Resolution Of The City Of Wilsonville Supporting The Metro Regional Affordable Housing Ballot Measure And Oregon State Constitutional Amendment Ballot Measure At The November 2018 General Election.

**Motion:** Councilor Lehan moved to approve Resolution No. 2706. Councilor Akervall seconded the motion.

The Council concurred that there is a crisis with affordable housing and something needs to be done to help alleviate the problem. Council agrees that this is not a fix but it is a step in the right direction.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

**PUBLIC HEARING**

- A. **Resolution No. 2702**  
Boones Ferry Park Master Plan.

Mr. Cosgrove read the title of Resolution No. 2702 into the record.

**CITY OF WILSONVILLE  
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Staff sought a continuance of the public hearing for Resolution No. 2702 scheduled for August 20, 2018 to a date certain of November 5, 2018.

**Motion:** Councilor Lehan moved to continue the public hearing of Resolution No. 2702 to November 5, 2018. Councilor Stevens seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

- B. **Ordinance No. 818**  
An Ordinance Of The City Of Wilsonville Repealing And Replacing Chapter 8 – Environment Of The Wilsonville Code And To Repeal Ordinance No. 482.

Mr. Cosgrove read the title of Ordinance No. 818 into the record.

Staff sought a continuance of the public hearing for Ordinance No. 818 scheduled for August 20, 2018 to a date certain of September 6, 2018.

**Motion:** Councilor Lehan moved to continue the public hearing of Ordinance No. 818 to September 6, 2018. Councilor Stevens seconded the motion.

**Vote:** Motion carried 4-0.

**SUMMARY OF VOTES**

Mayor Knapp	Yes
Council President Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

**CITY MANAGER’S BUSINESS**

Reminded Council of the Anniversary dinner celebration with the Kitakata delegation at McMenamins Old Church on Tuesday, August 21, 2018.

**LEGAL BUSINESS**

No Report.



**CITY OF WILSONVILLE  
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**ADJOURN**

Mayor Knapp adjourned the meeting at 8:45 p.m.

Respectfully submitted,

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Kimberly Veliz, City Recorder

ATTEST:

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Tim Knapp, Mayor

DRAFT



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> September 6, 2018	<b>Subject: Ordinance No. 818 - 1<sup>st</sup> Reading</b> Code Updates Regarding Enforcement Of Stormwater Regulations.  <b>Staff Member:</b> Kerry Rappold, Natural Resources Manager; Amanda Guile-Hinman, Assistant City Attorney  <b>Department:</b> Natural Resources/Legal	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: September 6, 2018 <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: September 6, 2018 <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: September 17, 2018 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> Adoption of a new Wilsonville Code Chapter 8 – Environment to address housekeeping issues and also to substantively address stormwater regulation and enforcement.	
<b>Staff Recommendation:</b> Staff recommends the Council adopt Ordinance No. 818 on first reading.		
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 818 on first reading.		
<b>Project / Issue Relates To:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUES BEFORE COUNCIL:

Council to consider adoption of a new Wilsonville Code (WC) Chapter 8 – Environment to address housekeeping issues and substantive issues regarding regulation and enforcement of stormwater

### Ordinance No. 818 Staff Report

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provisions. Currently, there is no clear process for enforcing violations of stormwater regulations. Moreover, Chapter 8 does not delineate between enforcement of stormwater as opposed to enforcement of industrial wastewater and sanitary sewer regulations. Because of the specific federal and state laws and regulations applicable to each, enforcement needs to be addressed in different, but complementary, manners.

The revisions also include some “housekeeping” within Chapter 8 and remove the provisions related to solid waste and recycling, as those matters are addressed in the recently adopted Ordinance No. 814. Staff added WC 8.010 under “General Provisions” to reflect that solid waste management is handled by Ordinance. Attached hereto as **Attachment A** is the Ordinance adopting revisions to Wilsonville Code Chapter 8. Attached hereto as **Attachment B** is a redline of changes made to specific sections of Chapter 8 since the Council work session on August 20, 2018.

### EXECUTIVE SUMMARY:

This Staff Report explains staff’s proposal for restructuring Chapter 8, as well as some of the issues concerning erosion prevention and sediment control (ESC) regulations found in WC 8.534 and enforcement of stormwater regulations in WC 8.536. This Staff Report further outlines the changes staff made to Chapter 8 since the Council held a work session on May 21, 2018.

#### 1. Chapter 8 “Housekeeping”

City staff worked to reorganize Chapter 8 to match enforcement provisions with the regulations they enforce. The table below explains the “housekeeping” performed by staff:

Current Code Section/ Ordinance	New Code Section (if applicable)	Action Taken by Staff	Reason for Action
General Provisions – WC 8.000-8.008	Added WC 8.010	Update 8.006 (definitions); Add 8.010	Added definitions necessary for clarifying erosion prevention and sediment control and for enforcement of stormwater regulations; minor updates for consistency. Added a general provision discussing solid waste management to reflect new franchise agreement.
Water Conservation – WC 8.101-8.150	N/A	Update	Housekeeping; updates to reflect defined terms. Added language in WC 8.136 to address notifications via the internet regarding use of water during an emergency.
Public Sanitary Sewer Use – WC 8.200-8.214	N/A	Update	Housekeeping; updates to correct citations to Code provisions and grammatical errors.
Industrial Wastewater Regulations – WC 8.300-8.320	WC 8.400-8.420	Update	Housekeeping; updates to correct citations to Code provisions and grammatical errors.
Solid Waste Disposal – WC 8.400-8.404	WC 8.010	Update and Replace	Housekeeping; incorporated in Ordinance No. 814.
Stormwater – WC 8.500-8.534	WC 8.300-8.336	Update	Updated and renumbered WC 8.534 to WC 8.334 to provide clearer requirements for erosion prevention and sediment control and updated and renumbered 8.536 to 8.336 to enforce stormwater regulations.

Code Section/ Ordinance	New Code Section (if applicable)	Action Taken by Staff	Reason for Action
Enforcement – WC 8.602-8.606	WC 8.502- 8.506	Update and Replace 8.400-8.404	Minor changes to reflect that the enforcement measures apply to WC 8.200-214 and 8.400-420. Moved to follow 8.400-8.420 so it follows the provisions it enforces.
Business Recycling Requirements – WC 8.700-8.750	WC 8.010	Update and Replace	Housekeeping, incorporated in Ordinance No. 814.
Industrial Pretreatment Program Enforcement Response Plan	N/A	Update	Housekeeping; updates to correct citations to Code provisions and grammatical errors.
Ordinance 482	N/A	Repeal	Requires and regulates ESC permits, which will be incorporated into WC 8.334, so the Ordinance is no longer necessary.

The proposed update to Chapter 8 has been reorganized so that the relevant provisions that potentially apply to any resident or business in Wilsonville are first in the Chapter and the more specific Industrial Wastewater regulations are later in the Chapter since they only apply to industrial users (as defined in the Chapter and by 40 CFR 403.8 (federal regulations set by the Environmental Protection Agency)).

## 2. Comprehensive Redrafting of Erosion Prevention and Sediment Control Regulation

One of the initial reasons that City staff began reexamining WC Chapter 8 was the need to revise the current sections titled: WC 8.534 – Erosion Prevention and Sediment Control (renumbered to WC 8.334) and WC 8.536 – Stormwater – Violations (renumbered to WC 8.336). Previously, the Erosion Prevention and Sediment Control (“ESC”) provision referred to the Stormwater Management Coordinator. However, to create a more efficient inspection process, these duties have been reassigned to the Engineering Technicians. Additionally, ESC was previously regulated under Ordinance No. 482. New requirements within the Oregon Department of Environmental Quality (DEQ) Municipal Separate Storm Sewer System (MS4) Permit require the City to issue a permit for any land disturbing activities between 500 square feet and five acres in area, which makes Ordinance No. 482 obsolete. City staff examined city codes from other jurisdictions and determined that the current WC 8.534 needed to be expanded to outline the ESC permit requirement, the ESC Plan that a developer must submit to the City, inspection requirements, and revisions necessary to such ESC Plans if erosion is occurring.

## 3. Enforcement of Stormwater Regulations

The second reason that City staff reexamined WC Chapter 8 was the lack of clarity and usefulness of the enforcement provisions found in the current WC 8.536 (renumbered to 8.336) to enforce the stormwater regulations found in the current WC 8.500 through 8.534 (renumbered to 8.300 through 8.334). In particular, the current WC 8.536 does not allow for more substantial fines when the violation is significant and is not clear with respect to assessing fines per day when a stormwater violation is ongoing. For example, if a business is found to be discharging contaminated water into the City’s stormwater system, they are currently subject to a \$500 fine. An enforcement action last year involved a site where trash seepage and related materials were discharged into the City’s stormwater system for over 25 days. The Stormwater Management Coordinator initially worked with the business, but eventually had to contact the City Attorney and the police department. After

25 days and two visits by a police officer, the discharge was finally stopped. A more efficient enforcement procedure implemented by City staff would provide the City a clearer mechanism to stop the flow of contaminated stormwater into the City's stormwater system.

The proposed draft of WC 8.336 (renumbered from the current WC 8.536) provides a process for City staff to enforce the stormwater regulations in the renumbered WC 8.300 through 8.334 and to impose fines that are applicable to the particular violation. In other words, if a minor violation is associated with an individual who may not be well-educated in ESC requirements, a smaller fine may be appropriate versus a sophisticated developer that chooses to disregard ESC standards.

City staff recommend a multi-factor approach to establishing the appropriate fine that can range from \$50 to \$5,000 per offense or, in the case of a continuing offense, up to \$1,000 for each day of the offense. This process is modeled after the City of Corvallis. The factors include:

- (a) The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
- (b) Any prior violations of statutes, rules, orders and permits;
- (c) The gravity and magnitude of the violation;
- (d) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- (e) The cost to the City;
- (f) The violator's cooperativeness and efforts to correct the violation; and
- (g) Any relevant regulation under the City Code.

The revised and renumbered 8.336 mimics other enforcement provisions found in Chapter 8, but tailors the enforcement provisions to stormwater because violations may be caused offsite from a property or by a party that is not the owner of the property.

#### **4. Changes from August 20, 2018 Council Work Session**

Staff expanded the first provision of Chapter 8, which provides an introductory explanation to the Chapter. Staff's revisions are aimed to guide a reader to the particular section that may be applicable to the reader. Staff also made a minor change to WC 8.118 based on internal staff feedback that the original provisions do not match the Oregon Plumbing Specialty Code. Since the Oregon Plumbing Specialty Code is incorporated into the City's Code pursuant to Chapter 9, Staff made a cross reference to that chapter. That way, as the Oregon Plumbing Specialty Code is updated, only one chapter of the City's Code would need to be updated. *See Attachment B* showing the redline changes since the August 20, 2018 Council Work Session.

City staff also created **Attachment C**, which is a chart serving as a guide to explain which provisions of Chapter 8 apply to whom, when such provisions would apply, and what, if any, permits may be required of a Wilsonville resident or business.

#### **EXPECTED RESULTS:**

Developers and other interested parties will have a better understanding of the City's ESC requirements and City staff will have more clarity in the enforcement of City stormwater regulations.

**TIMELINE:**

The WC Chapter 8 revisions are scheduled for a first reading and public hearing on September 6, 2018. The second reading will then occur on September 17, 2018.

**CURRENT YEAR BUDGET IMPACTS:**

City staff do not anticipate any significant budget impacts. Refinement of WC Chapter 8 should not, and is not intended to, cause substantial increases in fines, but rather help encourage compliance before a fine becomes necessary.

**FINANCIAL REVIEW / COMMENT:**

Reviewed by: SCole Date: 7/20/2018

**LEGAL REVIEW / COMMENT:**

Reviewed by: ARGH Date: 7/20/2018

**COMMUNITY INVOLVEMENT PROCESS:**

Staff will work with the Community Development Department to ensure that City staff properly communicate the new stormwater regulations to new and current businesses and residents. Staff will also explore developing a webpage with information to guide citizens and businesses regarding Chapter 8 regulations and which staff should be contacted to answer questions or concerns regarding the regulations.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

Revision of WC Chapter 8 should benefit the community by encouraging compliance with the City's stormwater requirements.

**ALTERNATIVES:**

Retain WC Chapter 8 as is.

**CITY MANAGER COMMENT:**

N/a

**ATTACHMENTS:**

- Attachment A: Ordinance No. 818
- Attachment B: Redline changes after August 20, 2018 Work Session
- Attachment C: Chart outlining applicability of Chapter 8

# ATTACHMENT A

## ORDINANCE NO. 818

### **AN ORDINANCE OF THE CITY OF WILSONVILLE REPEALING AND REPLACING CHAPTER 8 – ENVIRONMENT OF THE WILSONVILLE CODE AND TO REPEAL ORDINANCE NO. 482.**

WHEREAS, Wilsonville Code (WC) Chapter 8 was last revised via Ordinance No. 753 in November 2014; and

WHEREAS, portions of Chapter 8 – Environment need to be revised to provide for comprehensive compliance and enforcement measures related to stormwater management regulations; and

WHEREAS, the City of Wilsonville (City) was issued a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge Permit from the Oregon Department of Environmental Quality (DEQ), which was renewed in March 2012 and has been administratively extended by DEQ; and

WHEREAS, the City is a co-permittee with Clackamas County, other cities within Clackamas County, and certain service districts under its NPDES MS4 Discharge Permit; and

WHEREAS, the City's Chapter 8 provisions governing stormwater management, particularly regarding compliance and enforcement, are insufficient and less robust in some instances than other co-permittees' code provisions; and

WHEREAS, the City has encountered incidents of continuing stormwater violations without clear guidance and provisions from Chapter 8 for how to enforce the City's stormwater management requirements; and

WHEREAS, in undertaking a review of Chapter 8 in relation to stormwater management, revising provisions for clarification and grammar became necessary; and

WHEREAS, in undertaking a review of Chapter 8, renumbering sections of Chapter 8 to provide a more logical approach to Chapter 8 also became necessary.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The above recitals are incorporated by reference as if fully set forth herein.
2. Chapter 8 – Environment of the Wilsonville Code is repealed and replaced with Attachment 1, attached hereto and incorporated by reference as if fully set forth herein.

- 3. Ordinance No. 482 is hereby repealed.
- 4. The City Recorder shall conform these amendments to the City’s code format and correct any scrivener’s errors.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 6th day of September 2018, and scheduled for second reading on the 17th day of September 2018, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

\_\_\_\_\_  
Kimberly Veliz, City Recorder

ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following votes:            Yes: \_\_\_\_\_            No: \_\_\_\_\_

\_\_\_\_\_  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
TIM KNAPP, MAYOR

SUMMARY OF VOTES:

- Mayor Knapp
- Council President Starr
- Councilor Stevens
- Councilor Lehan
- Councilor Akervall

Attachments:

Attachment 1 – Proposed New Wilsonville Code Chapter 8



## WILSONVILLE CODE

### CHAPTER 8 - ENVIRONMENT

#### GENERAL PROVISIONS

- 8.000 General Provisions
- 8.002 Administration
- 8.004 Abbreviations
- 8.006 Definitions
- 8.008 Miscellaneous Provisions
- 8.010 Solid Waste Management

#### WATER CONSERVATION

- 8.101 Declaration of Emergency
- 8.102 Notice of Declaration of Emergency
- 8.108 Standards – Purpose
- 8.112 Standards – Application
- 8.114 Standards – Wasted Water
- 8.116 Section Not Used
- 8.118 Standards – General
- 8.120 Section Not Used
- 8.130 Use of Water During Emergency – Prohibited Uses of Water
- 8.132 Use of Water During Emergency – Exemptions
- 8.134 Use of Water During Emergency – Length of Restriction
- 8.136 Use of Water During Emergency – Declaration Period
- 8.140 Authority of Officer
- 8.150 Penalties

#### PUBLIC SANITARY SEWER USE

- 8.200 General Provisions
- 8.202 Use of Public Sanitary Sewer Required
- 8.204 Private Sewage Disposal
- 8.205 Conflict
- 8.206 Buildings Sanitary Sewers and Connections
- 8.208 Use of Public Sanitary Sewers
- 8.210 Public Sanitary Sewers – Construction
- 8.212 Public Sanitary Sewers - Property Damage Prohibited
- 8.214 Powers and Authorities of Inspectors

#### STORMWATER

- 8.300 General Provisions
- 8.302 Stormwater System Construction
- 8.304 Use of Public Stormwater System
- 8.306 Public Stormwater System – Property Damage Prohibited
- 8.308 Right of Entry
- 8.310 Discharge of Pollutants
- 8.312 Discharge in Violation of Permit
- 8.314 Waste Disposal Prohibitions

## **WILSONVILLE CODE**

- 8.316 General Discharge Prohibitions
- 8.318 Compliance with Industrial NPDES Stormwater Permits
- 8.320 Compliance with Local, State, and Federal Laws and Regulations
- 8.322 Conflicts with Existing and Future Regulatory Requirements of Other Agencies
- 8.324 Accidental Spill Prevention and Control
- 8.326 Notification of Spills
- 8.328 Requirement to Eliminate Illicit Connections
- 8.330 Requirement to Remediate
- 8.332 Requirement to Monitor and Analyze
- 8.334 Erosion Prevention and Sediment Control
- 8.336 Stormwater – Violations

### INDUSTRIAL WASTEWATER REGULATIONS

- 8.400 General Provisions
- 8.401 Applicability
- 8.402 General Sanitary Sewer Use Requirements
- 8.404 Pretreatment of Wastewater
- 8.406 Industrial Wastewater Discharge Permit
- 8.408 Industrial Wastewater Discharge Permit Issuance by City
- 8.410 Reporting Requirements
- 8.412 Compliance Monitoring
- 8.414 Confidential Information
- 8.416 Publication of Users in Significant Noncompliance
- 8.418 Affirmative Defense
- 8.420 Pretreatment Charges and Fees

### ENFORCEMENT

- 8.502 Administrative Enforcement Remedies
- 8.504 Judicial Enforcement Remedies
- 8.506 Supplemental Enforcement Action

### INDUSTRIAL PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN

- Section I Introduction
- Section II Enforcement Remedies
- Section III Assessment of Administrative Fines
- Section IV Noncompliance Defined
- Section V Range of Enforcement Responses
- Section VI Enforcement Procedures
- Section VII Time Frames for Enforcement Action and Follow Up
- Section VIII Responsibilities of Personnel
- Section IX Enforcement Response Matrix

## WILSONVILLE CODE

### ENVIRONMENT

#### GENERAL PROVISIONS

##### 8.000 General Provisions – Environment

(1) Chapter 8 of this Code is enacted for the purpose of promoting the general public welfare by ensuring procedural due process in the administration and enforcement of the City's Comprehensive Plan, Design Review, Permitting Process, Building Code, Development Standards and Public Works Standards, and associated state and federal regulations.

(2) This Chapter addresses four (4) key sections: Water Conservation; Public Sanitary Sewer; Stormwater; and Industrial Wastewater regulations. This Chapter sets forth requirements and enforcement mechanisms pertaining to these four (4) sections. Information regarding compliance requirements for each of the four (4) sections is as follows:

(a) Water Conservation: the Water Conservation regulations are found in WC 8.101 through 8.150 and involve the City's regulation of personal and business use of water during emergencies.

(b) Public Sanitary Sewer: the Public Sanitary Sewer regulations are found in WC 8.200 through 8.214 and to any person or business whose property is connected to the Public Sanitary Sewer system. The Public Sanitary Sewer regulations state when a connection to the public sanitary sewer system is required (8.202); the permitting and specifications for such connections (8.206); and construction of public sanitary sewers (8.210); and other regulations found in WC 8.200 through 8.214.

(c) Stormwater: the Stormwater regulations are found in WC 8.300 through 8.336 and applies to any person or business who discharges materials into the City's stormwater system, including run-off from owned property; or who constructs a stormwater facility that connects to or discharges any material, including property run-off, into the City's stormwater system. The Stormwater regulations include construction requirements (8.302); erosion prevention and sediment control requirements (8.334); and enforcement measures (8.336); and other regulations found in WC 8.300 through 8.336.

(d) Industrial Wastewater: the Industrial Wastewater regulations and enforcement are found in WC 8.400 through 8.506 and apply to businesses that are subject to the United States Environmental Protection Agency's (EPA) regulations found in the Code of Federal Regulations (CFR), Title 40, Part 403 regarding pretreatment and discharge of industrial wastewater.

(3) This Chapter shall be known as the Environment Chapter and includes those ordinances familiarly referred to as the Water Conservation Ordinance, Public Sanitary Sewer Use Ordinance, Storm Water Ordinance, Industrial Wastewater Ordinance, and Environment Enforcement.

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### 8.002 Administration.

Except as otherwise provided herein, the Public Works Director shall administer, implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed upon the Public Works Director may be delegated by the Public Works Director to a duly authorized representative.

### 8.004 Abbreviations. The following abbreviations shall have the designated meanings:

(a)	<u>BOD</u>	Biochemical Oxygen Demand
(b)	<u>BMP</u>	Best Management Practices
(c)	<u>BMR</u>	Baseline Monitoring Reports
(d)	<u>CFR</u>	Code of Federal Regulations
(e)	<u>CIU</u>	Categorical Industrial User
(f)	<u>COD</u>	Chemical Oxygen Demand
(g)	<u>DEQ</u>	Oregon Department of Environmental Quality
(h)	<u>EPA</u>	U.S. Environmental Protection Agency
(i)	<u>gpd</u>	Gallons Per Day
(j)	<u>IU</u>	Industrial User
(k)	<u>mg/l</u>	Milligrams per liter
(l)	<u>NPDES</u>	National Pollutant Discharge Elimination System
(m)	<u>NSCIU</u>	Non-Significant Categorical Industrial User
(n)	<u>O&amp;M</u>	Operation and Maintenance
(o)	<u>POTW</u>	Publicly Owned Treatment Works
(p)	<u>RCRA</u>	Resource Conservation and Recovery Act
(q)	<u>SIC</u>	Standard Industrial Classification
(r)	<u>SIU</u>	Significant Industrial User
(s)	<u>SNC</u>	Significant Non-Compliance
(t)	<u>SWDA</u>	Solid Waste Disposal Act (42 U.S.C. 6901, <u>et seq.</u> )
(u)	<u>TSS</u>	Total Suspended Solids
(v)	<u>USC</u>	United States Code

**8.006 Definitions.** For the purpose of this Chapter, the following terms, words, phrases and their derivations shall have the meaning given herein, unless the context specifically indicates otherwise:

(1) Act or “the Act”. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) Applicant. The Owner of a property and/or the Owner’s agents, contractors, or developers who applies for a City permit.

(a) ESC Applicant. The Owner of a property and/or the Owner’s agent, contractors, or developers who applies for an Erosion Prevention and Sediment Control permit pursuant to this Chapter 8.

## WILSONVILLE CODE

- (3) Authorized or Duly Authorized Representatives of the User.
- (a) If the user is a corporation, authorized representative shall mean:
- 1) The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other Person who performs similar policy or decision-making functions for the corporation; or
  - 2) The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate or direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulation; can ensure that the necessary systems are established or action taken to gather complete and accurate information for individual City-issued industrial wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (b) If the user is a partnership, or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
- (c) If the user is a Federal, State or local government facility the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (d) The individuals described in paragraphs (3) (a)-(c) above may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the Discharge originates or having overall responsibility for environmental matters for the company, and the authorization is submitted to the City.
- (4) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration (milligrams per liter mg/l).
- (5) Best Management Practices or BMP's.. The schedule of activities, controls, prohibition of practices, maintenance procedures, and other management practices designed to prevent or reduce pollution.
- (a) Erosion and Sediment Control BMPs. BMPs that are intended to prevent Erosion and sedimentation, such as preserving natural vegetation, seeding, mulching and matting, plastic covering, Sediment fences, and Sediment traps and ponds. Erosion and Sediment control BMPs are synonymous with stabilization and structural BMPs.

## WILSONVILLE CODE

- (b) Pretreatment BMPs. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMP's include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMP's may also include alternative means (i.e., management plans) of complying with, or in place of certain established Categorical Pretreatment Standards and effluent limits.
- (6) Building Drain. Shall mean that part of the lowest piping of a drainage system which receives the Discharge from soil, waste and other drainage pipes inside the exterior walls of the buildings and which conveys it to the Building Sewer, which begins five (5) feet (1.524 meters) outside of the building exterior wall.
- (7) Building Sewer (Sanitary Sewer). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a Building Drain and that receives the Sewage Discharge of the Building Drain and conveys it to a public Sanitary Sewer, private sanitary Sewer, private Sewage disposal system, or other point of disposal (aka Sanitary Sewer Lateral).
- (8) Building Sewer (Storm Sewer). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a Building Drain and that receives the Stormwater or other approved drainage, but no Sewage Discharge from a Building Drain, and conveys it to a Public Stormwater System, private Stormwater system or other point of disposal (aka Storm Sewer Lateral).
- (9) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing Pollutant Discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S. C. 1317) that applies to a specific category of users and that appears in 40 CFR Chapter I, Subchapter N, Parts 405-471, incorporated herein by reference.
- (10) Categorical Industrial User. An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.
- (11) Chemical Oxygen Demand (COD). A measure of oxygen required to oxidize all compounds, both inorganic and organic in water. COD is expressed as the amount of oxygen consumed from chemical oxidant in mg/l during a specific test.
- (12) City. The City of Wilsonville, Oregon or the City Council of Wilsonville, Oregon or a designated representative of the City of Wilsonville, Oregon.
- (13) City's Authorized Stormwater Representative. A Representative selected by the Community Development Director to oversee Stormwater activities and enforcement.
- (14) City Manager. The City Manager for the City of Wilsonville, other designated authority charged with the administration and enforcement of this Chapter, or the City Manager's duly authorized representative.

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(15) Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

(16) Commercial. Shall mean for the purposes of this Chapter, all buildings or structures of which are not designed for the purposes of these sections as Residential or Industrial in keeping with the City's zoning and building code provisions. Commercial when used in the context of this Chapter's Pretreatment Standards shall mean Industrial.

(17) Composite Sample. The sample resulting from the combination of individual Wastewater samples taken at selected intervals based on either an increment of flow or time.

(18) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, to which the only pollutant added, is heat.

(19) Control Authority. The City of Wilsonville, Oregon or designated representative of the City, tasked with the administration of this Chapter.

(20) Customer. Shall mean any individual, firm, company, association, society, corporation, group or Owner, who receives utility services from the City such as water, Sanitary Sewer, Stormwater and streetlights.

(21) Daily Maximum. The arithmetic average of all effluent samples for a Pollutant collected during a calendar day.

(22) Daily Maximum Limits. The maximum allowable Discharge limit of a Pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily Discharge is the total mass released or introduced over the course of a day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily Discharge is the arithmetic average measure of the Pollutant concentration derived from all the measurements taken that day.

(23) Department of Environmental Quality or DEQ. The Oregon Department of Environmental Quality or where appropriate, the term may also be used any duly authorized official of the Department.

(24) Discharge. The release or the introduction of Pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c) or (d), of the Act.

(25) Environmental Protection Agency or EPA. The United States Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director, the Regional Administrator or other duly authorized official of said agency.

(26) Erosion. The movement of soil, rocks, and other surface materials by wind, water, or mechanical means.

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(27) Erosion Prevention and Sediment Control (ESC). Any temporary or permanent measures taken to reduce Erosion, control siltation and sedimentation, and ensure that Sediment-laden water does not leave a site.

(28) Erosion Prevention and Sediment Control Plan (ESC Plan). Standards found within this Chapter and set forth in the Clackamas County Water Environment Services' most current version of the "Erosion Prevention and Sediment Control Planning and Design Manual" for all Erosion and Sediment control measures.

(29) Existing Source. Any source of Discharge that is not a "New Source."

(30) Federal. The United States government, including all related branches and authorized representatives or officials of the United States government.

(31) Garbage. Shall mean all refuse and solid wastes, including ashes, rubbish in cans, debris generally, dead animals, street cleaning and Industrial wastes and things ordinarily and customarily dumped, solid wastes from domestic and Commercial preparation, cooking and dispensing food, and from the handling, storage and sale of product, but not including source separated recyclable material purchased from or exchanged by the generator for fair market value for recycling Sewage and body waste.

(32) Grab Sample. A sample that is taken from a waste stream on a one-time basis without regard to the flow in the waste stream over a period of time not to exceed 15 minutes.

(33) Illicit Discharge. Any Discharge to the public or natural Stormwater conveyance system that is not composed entirely of Stormwater, except Discharges governed by and in compliance with an NPDES Stormwater Permit.

(34) Indirect Discharge. The introduction of pollutants into the POTW from a non-domestic source.

(35) Instantaneous Limit. The maximum concentration of a Pollutant allowed to be Discharged at any time, determined from the analysis of any discrete or Composite Sample collected, independent of the Industrial flow rate and the duration of the sampling event.

(36) Industrial. Shall mean, in the context of Building Sanitary Sewer permits and connections, all buildings or structures in which a product is manufactured, stored, or distributed, or any combination of the above in keeping with the City's zoning and building code provisions. It shall otherwise mean in the context of this Chapter for Pretreatment Standards, non-domestic.

(37) Industrial Wastewater. Any non-domestic Wastewater originating from a nonresidential source.

(38) Interference. A Discharge, which, alone or in conjunction with a Discharge or Discharges from other sources:



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(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes; use or disposal; and

(b) Therefore is a cause of a violation of the City’s NPDES Waste Discharge Permit (including an increase in the magnitude or duration of a violation) or of the prevention of Sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued there under (or any more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

(39) Land Development. Any human-caused change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located or storage of equipment or materials located within the area of special flood hazard. A Land Development may encompass one or more tax lots.

(40) Lessee. A Person other than the Owner having a legal right to possess or control the property.

(41) Local Limits. Specific Discharge limits developed and enforced by the City upon Industrial or Commercial facilities to implement the general and specific Discharge prohibitions listed in this Chapter.

(42) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(43) Monthly Average. The sum of all “daily Discharges” measured during a calendar month divided by the number of “daily Discharges” measured during the month.

(44) Monthly Average Limits. The highest allowable average of “daily Discharges” over a calendar month, calculated as the sum of all “daily Discharges” measured during a calendar month divided by the number of “daily Discharges” measured during that month.

(45) Municipal Separate Storm Sewer System (MS4). A system of conveyances, including roads, ditches, catch basins, and Storm Drains that are owned or operated by a public entity.

(46) National Pretreatment Standard. National Pretreatment Standard is defined in 40 CFR 403.3(l) as any regulation containing Pollutant Discharge limits promulgated by EPA under Section 307(b) and (c) of the Clean Water Act applicable to users, including the general and specific prohibition found in 40 CFR 403.5.

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(47) New Source.

(a) Any building, structure, facility or installation from which there is or may be a Discharge of Pollutants, the construction of which commenced after the publication of Proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are hereafter promulgated in accordance with that section provided that:

- 1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- 2) The building, structure, facility or installation completely replaces the process of production equipment that causes the Discharge of Pollutants at the Existing Source or
- 3) The production of Wastewater generating processes of the buildings, structure, facility or installation is substantially independent of an Existing Source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity, as the Existing Source should be considered.

(b) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (a) (1), (2) of this section but otherwise alters, replaces or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the Owner or operator has:

- 1) Begun, or caused to begin as part of a continuous on-site construction program;
  - a) Any placement, assembly, or installation of facilities or equipment; or
  - b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities for equipment or
- 2) Entered into a binding or contractual obligation for the purchase of facilities of equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

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- (48) Non-contact Cooling Water. Water used for cooling that does not come into contact with any raw material, intermediate product, waste product or finished product.
- (49) NPDES Stormwater Permit. A National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342).
- (50) NPDES Waste Discharge Permit. A National Pollutant Discharge Elimination System permit issued pursuant to ORS 468B.050 and the Federal Clean Water Act.
- (51) Official or Building Official. Shall be the Building Official for the City of Wilsonville.
- (52) Owner. Shall mean the Person(s) who holds title to the property.
- (53) Pass Through. A Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a Discharge or Discharges from other sources, is a cause of a violation of the City's NPDES Waste Discharge Permit (including an increase in the magnitude or duration of a violation).
- (54) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, or local governmental entities.
- (55) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.
- (56) Pollutant. Any dredged spoil, solid waste, incinerator residue, Sewage, Garbage, Sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or Discharged equipment, rock, sand, cellar dirt, municipal, agricultural and Industrial wastes and certain characteristics of Wastewater (e.g. pH, temperature, TSS, turbidity, Color, BOD, COD, toxicity, or odor).
- (57) Pretreatment. The reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration in the nature of Pollutant properties in Wastewater prior to or in lieu of introducing such Pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical or biological processes, by process changes or by other means except by diluting the concentration of the Pollutant unless allowed by the applicable Pretreatment Standard.
- (58) Pretreatment Requirement. Any substantive or procedural requirements related to the Pretreatment, other than National Pretreatment Standards, imposed on an Industrial user.
- (59) Pretreatment Standard or Standard. Prohibited Discharge standards, Categorical Pretreatment Standards and Local Limits.

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(60) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the Discharge of certain types or characteristics of Wastewater as established by EPA, DEQ, and/or the Public Works Director.

(61) Public Sewer. Shall mean a Sewer, either sanitary or storm, in which all the Owners of abutting property have equal rights, and which is controlled by public authority.

(62) Public Stormwater System. A Stormwater system owned or operated by the City of Wilsonville.

(63) Publicly Owned Treatment Works or POTW. A “treatment works” as defined in Section 212 of the Act, (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in collection, storage, treatment, recycling and reclamation of Sewage, or Industrial wastes, and any conveyances which convey Wastewater to a Treatment Plant or other point of Discharge. The term also means the municipal entity having responsibility for the operation and maintenance of the system.

(64) Public Works Director. The Person designated by the City to supervise the operation of the POTW and who is charged with certain duties and responsibilities by this Chapter or their duly authorized representative.

(65) Receiving Stream or Water(s) of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

(66) Residential. Shall mean for the purposes of this Chapter, Building Sewers and connections, buildings or structures, which are built to be occupied for living purposes in keeping with the City’s zoning and building code provisions.

(67) Residential Users. Persons only contributing Sewage Wastewater to the municipal Wastewater system.

(68) Responsible Party. The Person who causes a violation of the Stormwater regulations contained in WC 8.300 through WC 8.334 or who has the authority to direct and control the Person causing the violation.

(69) Sanitary Sewer. Shall mean a City Sewer which carries Sewage and to which storm, surface and ground water are not intentionally admitted.

(70) Sediment. Mineral or organic matter generated as a result of Erosion.

(71) Septic Tank Waste. Any Sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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(72) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

(73) Sewer. Shall mean a pipe or conduit for carrying Sewage in the case of Sanitary (Wastewater) Sewer lines. Shall mean a pipe or conduit for carrying Stormwater runoff, surface waters or drainage in the case of storm water lines.

(74) Sewer Lateral. See Building Sewer – Sanitary and Storm definitions.

(75) Significant Industrial User.

(a) Except as provided in paragraph (b) of this section, the term Significant Industrial User means:

1) An Industrial Users subject to Categorical Pretreatment Standards or

2) Any other Industrial User that Discharges an average of 25,000 gallons per day or more of process Wastewater to the POTW (excluding Sanitary, Non-contact Cooling Water, and boiler blow-down Wastewater); contributes a process waste stream which makes up 5 per cent of more of the average dry weather hydraulic or organic capacity of the POTW or is designated as such by the City on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement (in accordance with 40 CFR 403.8(f)(6).

(b) The City may determine that an Industrial User subject to the Categorical Pretreatment Standards is a Non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never Discharges more than 100 gallons per day (gpd) of total categorical Wastewater (excluding Sanitary, Non-contact Cooling Water, and boiler blowdown Wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met.

2) The Industrial User, prior to City's findings, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;

3) The Industrial User annually submits the certification statement required in Section 8.410(14) together with any additional information necessary to support the certification statement; and

4) The Industrial User never Discharges any untreated concentrated Wastewater.

(c) Upon finding that an Industrial User meeting the criteria in paragraph (a)(2) of this section has no reasonable potential for adversely affecting the POTW's

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operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with 40 CFR 403.8(F)(6), determine that such Industrial User is not a Significant Industrial User.

(76) Slug Load or Slug Discharge. Any Discharge at a flow rate or concentration which has the potential to cause a violation of the specific Discharge prohibitions of this article. A slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits of Permit conditions.

(77) State. State of Oregon.

(78) Storm Drain. (Sometimes termed "Storm Sewer"). Shall mean a Sewer which carries storm and surface waters and drainage, but excludes Sewage and Industrial wastes, other than unpolluted Cooling Waters.

(79) Stormwater. Any flow occurring during or following any form of natural precipitation and resulting there from, including snow melt.

(80) Summary Abatement. An abatement of a violation by the City pursuant to WC 8.336(13), or a contractor employed by the City, by removal, repair, or other acts necessary to abate the violation and without notice to the Applicant, agent, or occupant of the property, except for the notice required by this Section.

(81) Suspended Solids or Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, Wastewater, or other liquid which is removable by laboratory filtering.

(82) Treatment Plant Effluent. Any Discharge of Pollutants from the POTW into Waters of the State.

(83) User or Industrial User. Any Person who contributes, or causes or allows the contribution of Sewage, or Industrial Wastewater into the POTW, including Persons who contribute such wastes from mobile sources.

(84) Visible and Measurable Erosion and Sediment.

(a) Sloughing, mud flows, gullies, rills, Sediment-laden water, or other Erosion that has occurred or is likely to occur.

(b) The presence of deposits or tracking of Sediment exceeding one half cubic foot in volume at any one time on public or private streets, in drainage systems, and/or on adjacent property.

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(c) In streams or drainage systems, an increase in Total Suspended Solids and/or turbidity relative to a control point immediately upstream of the Discharge point of the Sediment-generating activity.

(d) Offsite airborne debris clearly visible to the eye, including but not limited to dust, as determined by City Manager or designee.

(85) Wastewater. The liquid and water-carried Industrial wastes, or Sewage from Residential dwellings, Commercial buildings, Industrial and manufacturing facilities, and institutions, whether treated or untreated, which is contributed to the municipal Wastewater system.

(86) Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal Sewage and Industrial waste.

(87) Water is water from the City water supply system.

### 8.008 Miscellaneous Provisions

(1) Pretreatment Charges and Fees. The City may adopt, from time to time, by Administrative Authority, in the City's Master Fee Schedule reasonable charges and fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include;

(a) Fees for permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by Industrial Users;

(c) Fees for reviewing and responding to accidental Discharge procedures and construction;

(d) Fees for filing appeals;

(e) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, system development charges, fines and penalties chargeable by the City.

(2) Non-exclusivity. Enforcement of Pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Public Works Director may take other action against any Industrial User when the circumstances warrant. Further, the Public Works Director is empowered to take more than one enforcement action against any non-compliant Industrial User.

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### **8.010 Solid Waste Management**

The regulation of disposal and hauling, including both hauler and customer requirements, for solid waste, recycling, yard debris, organic materials, and other materials shall be adopted by City ordinance.



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### WATER CONSERVATION

#### **8.101 Declaration of Emergency**

A. When the City Water supply has become, or is about to become, depleted to such an extent as to cause a serious Water shortage in the City, the Mayor shall have the authority to declare an emergency Water shortage and to direct that the provision of Section 8.101, 8.102 and 8.130 of this article of the Code be enforced.

- B. In the event the Mayor is unavailable to declare an emergency, the following shall be the order of succession of authority, based upon availability:
- a. The President of the Council;
  - b. Any other council person;
  - c. The City Manager;
  - d. The Public Works Director

#### **8.102 Notice of Declaration of Emergency**

When a declaration of emergency is announced by the Mayor, the City Manager shall make the declaration public in a manner reasonably calculated to provide reasonable notice to the public. This provision shall not be construed as requiring personal delivery or service of notice or notice by mail.

#### **8.108 Standards – Purpose.**

This Section is established because during the summer months and in other times of emergency there is or may be insufficient Water in the City Water supply system to allow irrigation and other uses of Water at all times by all parties; and the level of Water supplied by the City is at certain times dangerously low; and it is imperative to the public well-being that certain uses of Water not essential to health, welfare and safety of the City be restricted from time to time.

#### **8.112 Standards – Application.**

The provisions of this Section shall apply to all Persons using water, both in and outside the City, regardless of whether any Person using Water shall have a contract for Water services with the City.

#### **8.114 Standards – Wasted Water.**

(1) Where Water is wastefully or negligently used on a Customer's premises, seriously affecting the general service, the City may discontinue the service if such conditions are not corrected after due notice by the City.

(2) Water shall not be furnished except through a meter to any premises where there are defective or leaking pipes, faucets, closets or other fixtures, or where there are Water closets or urinals without self-closing valves and, when such leakage or other defects are discovered and

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not corrected, the City may discontinue service after giving due notice and until repairs are made. If significant deficiencies are not corrected in a timely manner, as defined by the Public Works Director, the City may introduce enforcement action in conformance with Section 8.150 Violations.

(3) Water must not be allowed to run to waste through any faucet or fixture or kept running any time longer than actually necessary. Sprinkling of lawns, gardens, and parking strips shall be confined to what is actually needed and no running to waste on sidewalks, streets, and gutters shall be permitted. When any such waste is discovered, the Water service to the premises may be discontinued.

### 8.116 Section Not Used

### 8.118 Standards – General.

(1) In all new construction and in all repair and/or replacement of fixtures or trim, only fixtures or trim not exceeding the flow rates and/or Water usage shall be installed. The flow rates are found in the Oregon Plumbing Specialty Code as adopted in Wilsonville Code Chapter 9.

(2) Faucets on lavatories located in restrooms intended for the transient public in service stations, park toilet rooms, train stations and similar facilities shall be metering or self-closing.

(3) Any Water connective device or appliance requiring a continuous flow of five GPM of more and not previously listed in this section shall be equipped with an approved Water recycling system.

### 8.120 Section Not Used

### 8.130 Use of Water During Emergency – Prohibited Uses of Water.

(1) When a declaration of emergency is announced and notice has been given in accordance with this Section, the use and withdrawal of Water by any Person may be limited and include prohibition of the following:

- (a) Sprinkling, watering or irrigating shrubbery, trees, lawns, grass, groundcovers, plants, vines, gardens, vegetables, flowers or any other vegetation.
- (b) Washing automobiles, trucks, trailers, trailer houses, railroad cars, or any other type of mobile equipment

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- (c) Washing sidewalks, driveways, filling station aprons, porches and other surfaces.
- (d) Washing the outside of dwellings, washing the inside or outside of office buildings.
- (e) Washing and cleaning any business or industrial equipment and machinery.
- (f) Operating any ornamental fountain or other structure making a similar use of water.
- (g) Maintaining swimming and wading pools not employing a filter and re-circulating system.
- (h) Permitting the escape of Water through defective plumbing.

### **8.132 Use of Water During Emergency – Exemptions.**

At the discretion of the Mayor, one of more of the uses specified in Section 8.130 may be exempted from the provisions of this section. The exemption shall be made public as provided in Section 8.102 of this Chapter.

### **8.134 Use of Water During Emergency – Length of Restriction.**

The prohibition shall remain in effect until terminated by an announcement by the Mayor in accordance with Sections 8.102.

### **8.136 Use of Water During Emergency – Declaration Period.**

(1) The Mayor shall cause each declaration made by him pursuant to Sections 8.101 to 8.150 to be publicly announced by means of posting notice in three (3) public and conspicuous places in the City, and the Mayor may cause such declaration to be further announced in a newspaper of general circulation within the City when feasible, and publicize through the City's website and any other internet sites the City deems appropriate. Each announcement shall prescribe the action taken by the Mayor, including the time it became or will become effective, and shall specify the particular use for which the use of Water will be prohibited.

(2) Whenever the Mayor shall find the conditions which gave rise to the Water prohibition in effect pursuant to Sections 8.101 to 8.150 no longer exist, the Mayor may declare the prohibition terminated in whole or in part in the manner prescribed by these sections, effectively immediately upon announcement.

(3) The Mayor shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this section, and this includes the notice of termination, both in whole or in part.

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### **8.140 Authority of Officer.**

Any police officer of the City, Clackamas County or designated employee of the City may enter the premises of any Person for the purpose of shutting off or reducing the flow of Water being used contrary to the provisions of Sections 8.101 to 8.150.

### **8.150 Penalties.**

A Person convicted of a violation of any provisions of Sections 8.101 to 8.140 shall be punished upon a first conviction thereof for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof for a Class C Misdemeanor pursuant to Section 1.011. Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punished as such hereunder.

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### PUBLIC SANITARY SEWER USE

#### **8.200 Public Sanitary Sewer Use – General Provision**

(1) Purpose. Provides for the required use of public Sanitary Sewer facilities except as otherwise set forth, for the regulation of the building of and connection to public Sanitary Sewer facilities and for the uniform regulation of Indirect Discharge to the Publicly Owned Treatment Works (POTW) through the issuance of permits to certain non-domestic Users and through enforcement of general requirements for other Users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires User reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(2) Application to Users within and outside of City limits. Provisions of this article shall apply to Users within the City limits and to Users outside the City limits who, by contract or agreement with the City, are included as Users of the municipal Wastewater system.

#### **8.202 Use of Public Sanitary Sewer Required.** Except as herein provided in this Chapter:

(1) It shall be unlawful for any Person to place, deposit or permit to be deposited in any manner as described herein on public or private property within the City of Wilsonville, or in any area under the jurisdiction of said City, any human or animal excrement, Garbage or other objectionable waste.

(2) It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of Sewage.

(3) The Owner or Lessee of any house, building, or property used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley of right-of-way, in which there is now located or may in the future be located, a public Sanitary Sewer of the City, is hereby required, at Owner or Lessee's expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public Sanitary Sewer in accordance with the provisions of this section of the Code within ninety (90) days after the date of official notice to do so, provided that said public Sanitary Sewer for the Residential use is within three hundred (300) feet of the property. Commercial and Industrial buildings or structures shall connect no matter what the distance is from the public Sanitary Sewer to the property to be served.

#### **8.204 Private Sewage Disposal.**

(1) Where a public Sanitary Sewer is not available under the provisions of Section 8.202(3), the Building Sewer shall be connected to a private Sewage disposal system.

(2) Before commencement of construction of a private Sewage disposal system, the Owner or Lessee shall first obtain a written permit signed by the City.

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(a) The application for such permit shall be made on a form furnished by the City, and shall be supplemented by any plans, specifications and other information as are deemed necessary by the City. The appropriate Type B Construction Permit and plan check fee shall be paid by the City at the time the application is filed.

(b) A permit for a private Sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City. Inspection of the work in any stage of construction shall be allowed and, in any event, the Applicant for the permit shall notify the City when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the City.

(3) The type, capacities, location and layout of a private Sewage disposal system shall comply with all recommendations to the Oregon State Board of Health. No permit shall be issued for any private Sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to Discharge any natural outlet. If it is determined by the City that a health hazard would be created or that the soil is unable to transfer the Sewage runoff through the soil as an effective means of treatment of Sewage disposal, the City shall reject the septic or private Sewage disposal system, and require, at the Owner's or Lessee's expense, construction of an adequately sized Sanitary Sewer line as approved by the City to connect to an existing public Sanitary Sewer system. The Owner or Lessee shall construct the Sanitary Sewer by those requirements of the Public Works Standards of the City of Wilsonville.

(4) At such time as a public Sanitary Sewer becomes available to a property served by a private Sewage disposal system, as provided in Section 8.202(3), a direct connection shall be made to the public Sanitary Sewer in compliance with this Code, and any septic tanks, cesspools and similar disposal facilities shall be removed or opened and filled with sand or gravel in accordance with the Oregon Plumbing Specialty Code.

(5) Where existing buildings are too low to be served by gravity by an available Sanitary Sewer, the existing septic tank facilities shall be maintained in use and, when so ordered by the City under Section 8.202(3), approved pumping facilities shall be installed to pump the septic tank effluent to the available Sanitary Sewer system.

(6) The Owner or Lessee shall operate and maintain private Sewage disposal or pumping facilities in a sanitary manner at all times, at no expense to the City.

### **8.205 Conflict**

No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by State health officials.

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### 8.206 Buildings Sanitary Sewers and Connections.

(1) No unauthorized Person shall uncover, make any connections to or opening into, use, alter or disturb any Sanitary Sewer Lateral or appurtenance thereof without first obtaining a written permit from the Building Official. In each case, the Owner, Lessee, or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Official.

(2) There shall be two (2) classes of plumbing permits for Sanitary Sewer Laterals that run from the property line to the structure on the property:

- (a) Residential, Single, and Multifamily; and
- (b) Commercial.

If a Person intends to connect a Sanitary Sewer Lateral to the Public Sewer, the Person must also obtain a public works permit from the City.

(3) All costs and expenses incident to the installation and connection of the Sanitary Sewer Lateral shall be borne by the Owner or Lessee. The Owner or Lessee shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of the Sanitary Sewer Lateral.

(4) A separate and independent Building Sanitary Sewer shall be provided for every building; except, however, when one building stands at the rear of another on an interior lot and no private Sanitary Sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, then the building Sanitary Sewer from the front building may be extended to the rear building and the whole considered as one Building Sewer.

(5) Old Building Sanitary Sewers may be used in connection with new buildings only when they are found, on examination or through tests, by the Official, to meet all requirements of this Code Chapter.

(6) The size, slope, alignment, construction material of a Building Sanitary Sewer, and the methods to be used excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Oregon Structural Specialty Code and the Oregon Plumbing Specialty Code and other applicable rules and regulations of the City.

(7) Whenever possible, the building Sanitary Sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any Building Drain is too low to permit gravity flow to the public Sanitary Sewer, sanitary Sewage carried by such Building Drain shall be lifted by an approved means and Discharged to the building Sanitary Sewer.

(8) No Person shall make connection of roof down spouts, areaway drains, or other sources of Stormwater runoff to a Building Sanitary Sewer or Sewer drain which, in turn, is

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connected directly or indirectly to the public Sanitary Sewer.

(9) The connection of the Building Sanitary Sewer into the public Sanitary Sewer shall conform to the requirements of the State of Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City. All such connections shall be made gas-tight and water-tight. Any deviation from prescribed procedures and materials must be approved by the Building Official before installation.

(10) The Applicant for the building permits shall notify the Building Official when the Building Sanitary Sewer is ready for inspection. The connection shall be made under the supervision of the Building Official or designated representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the Applicant's or Owner's or Lessee's expense in a manner satisfactory to the City, in accordance with adopted Public Works Standards.

(11) All excavations for Building Sanitary Sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

(12) The property Owner or Lessee is responsible for the maintenance, repair and replacement of the Sanitary Sewer Lateral from the building up to and including the connection to the Sanitary Sewer main. Sewer Lateral maintenance work, which, as used herein, includes pipe clean-out, clog removal, root removal, foaming and any other work or protocol required to ensure proper flow. Repair and replacement work for the Sewer Lateral shall be done in accordance with the City's Public Works Standards and the City's Right of Way Permit.

### **8.207 Equipment and/or Vehicle Washing Facilities**

(1) Equipment and/or Vehicle wash areas shall be covered.

(2) Equipment and/or Vehicle washing facilities shall be equipped with a Water recycling system approved by the Public Works Director.

(3) Best available technology shall be utilized for the Pretreatment system of any drainage to the Sanitary Sewer system.

(4) No coin operated equipment and/or vehicle washing facilities shall be installed or used until plans have been submitted to and approved by the City. The plans shall show the method of connections to an approved Pretreatment system before discharging into the Sanitary Sewer system, disposal of rain or surface water and the protection of the potable water system. No rain or surface water shall be conveyed to or through the Sanitary Sewer system.

### **8.208 Use of Public Sanitary Sewers.**

(1) 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 City.



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(2) When required by the City, the Owner or Lessee of any property serviced by a Building Sanitary 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 sanitary 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 or Lessee at the Owner's or Lessee's expense, and shall be maintained by the Owner or Lessee so as to be safe and accessible at all times.

(3) 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 Sanitary Sewer to the point at which the building Sanitary Sewer is connection. 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/l of BOD may be based on forty-two percent (42%) of measured C.O.D.

(4) Grease, oil and sand interceptors shall be provided when, in the opinion of the Public Works Director 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 Public Works Director 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 or Lessee, at Owner or Lessee's expense. Connection to these devices shall conform to the requirements of the Oregon Plumbing Specialty Code and other applicable rules and regulations of the City.

(5) 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 Public Works Director, Industrial Users must separate existing domestic waste streams.

(6) Hauled Wastewater. Septic Tank Waste (septage) or hauled septage shall not be accepted into the municipal Wastewater system.

(7) Vandalism. No Person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or

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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 8.504.

**8.210 Public Sanitary Sewers – Construction**

(1) No Person shall construct, extend or connect to any public Sanitary Sewer without first obtaining a written permit from the City and paying all fees and connection charges and furnishing bonds as required herein and the Public Works Standards for the City of Wilsonville. The provisions of this section requiring permits shall not be construed to apply to contractors constructing Sanitary Sewers and appurtenances under contracts awarded and entered into by the City.

(2) The application for a permit for public Sanitary Sewer construction shall be accompanied by complete plans, profiles and specifications, complying with all applicable sections of the Code, rules and regulations of the City prepared by a registered civil engineer in the State of Oregon showing all details of the proposed work based on an accurate survey of the ground. The application, together with the plans, profiles and specifications shall be examined by the City Engineer or designee who shall, within twenty (20) days, approve them as filed or require them to be modified as the City Engineer or designee may deem necessary.

(3) All Sewer works plans, specifications and construction procedure shall conform to Public Works Standards for the City of Wilsonville.

(4) Prior to issuance of a permit for public Sanitary Sewer construction, the Applicant shall furnish to the City a performance bond, or cash deposit, in the amount of the total estimated cost of the work. Such performance bond, or cash deposit, shall be conditioned upon the performance of the terms and conditions of the permit and shall guarantee the correction of faulty workmanship and replacement of defective materials for a period of one (1) year from and after the date of acceptance of the work by the City.

(5) Except as provided, the extension of the public Sewage facilities to serve any parcel or tract of land shall be done by and at the expense of the Owner or Lessee. The size of all Sanitary Sewer mains and other Sewage facilities shall be as required by the City Engineer to lay Sewer pipe larger than that required for Owner or Lessee's own purposes, to accommodate other Users, and may be reimbursed under the provisions of Section 3.116 of the Wilsonville Code for the difference in cost between the size of the line installed and that which would be required for Owner or Lessee's own use.

(6) Where special conditions exist, in the opinion of the City Engineer, relating to any reimbursement agreement pursuant to the provisions of this section, The City may, either in addition to, or in lieu of any of the provisions of the section, authorize a special reimbursement contract between the City and the Person or Persons constructing Public Sewer facilities. Said special reimbursement agreement shall be made and entered into prior to the issuance of a permit for the work by the City.

(7) Vehicle maintenance installations shall be covered and equipped with oil/water

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separation and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(8) Vehicle fueling installations shall be covered and equipped with oil/water separators, spill control manholes, shut off valves and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(9) Outside storage areas for grease, oil, waste products, recycling, Garbage, and other sources of contaminants shall be equipped with oil/water separators, shut off valves and spill protection approved by the Public Works Director for any drainage to the Sanitary Sewer system. No drainage is allowed to enter the Storm Sewer system

### **8.212 Public Sanitary Sewers – Property Damage Prohibited.**

No unauthorized Person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the Sewage works which is a municipal public utility. Any Person violating this provision and as a result thereof damages any part of the Sewage works, shall be subject to arrest and prosecution under the laws of the State of Oregon as set forth in OPRS 164.345 through 164.365.

### **8.214 Powers and Authorities of Inspectors**

(1) In addition to the authority set forth in Section 8.412, the Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing, in connection with the provisions and regulations of City Sewage collection and treatment system as provided for in this Chapter.

(2) While performing the necessary work on private properties referred to in Section 8.412(1) and 8.214(1) above, the Owner or Lessee of the premises or representative shall notify the City or duly authorized employee of the City to observe all safety rules applicable to the premises established by the Owner or Lessee. The premises shall be maintained in a safe condition and the Owner or Lessee, or representative shall have a duty to notify the Public Works Director and any duly authorized representative of the City of any unsafe conditions.

(3) The City or duly authorized employee of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a negotiated easement, of for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the Sewage works which is connected to or lying within an easement. All entry and subsequent work, if any, on said easement of any connection thereto, on the sanitary system shall be done according to those regulations as stipulated in the Code of the City of Wilsonville.

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### **STORMWATER**

#### **8.300 General Provisions**

(1) Purpose. Provides for the building of and connection to public Stormwater facilities and for the uniform regulation of Discharges to the Public Stormwater System through the issuance of permits and through enforcement of general requirements for other Users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(2) Application to Users within and outside of City limits. Provisions of this article shall apply to users within the City limits and to users outside the City limits who, by contract or agreement with the City, are included as users of the Public Stormwater System.

#### **8.302 Stormwater System Construction**

(1) No unauthorized Person shall uncover, make any connections to or opening into the Public Stormwater System, use, alter or disturb any Storm Sewer Lateral or appurtenance thereof without first obtaining a permit from the City. In each case, the Owner, Lessee, or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the City's Authorized Stormwater Representative.

(2) All costs and expenses incidental to the installation and connection of Stormwater facilities shall be borne by the Owner or Lessee. The Owner or Lessee shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of Stormwater facilities or connections to the Public Stormwater System.

(3) The size, slope, alignment, construction materials of Stormwater facilities, and the methods to be used excavating, placing of the pipe or other facilities, jointing, testing and backfilling the trench, shall all conform to the requirements of the State of Oregon Plumbing Specialty Code and other applicable rules and regulations of the City, including the City's Public Works Standards.

(4) The connection of the Stormwater facilities to the Public Stormwater System shall conform to the requirements of the State of Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City, including the City's Public Works Standards. Any deviation from prescribed procedures and materials must be approved by the City's Authorized Stormwater Representative before installation.

(5) The property Owner or Lessee is responsible for the maintenance, repair and replacement of private Stormwater conveyance systems (such as a Storm Sewer Lateral, swale, etc.) from the building up to and including the connection to the Public Stormwater System. Storm Sewer Lateral maintenance work, as used herein, includes pipe clean-out, clog removal, root removal, foaming and any other work or protocol required to ensure proper flow. Repair and

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replacement work for a private Stormwater conveyance system shall be done in accordance with the City's Public Works Standards and the City's Right of Way Permit.

(6) The Applicant shall notify the City's Authorized Stormwater Representative when the Stormwater facilities are ready for inspection. The connection shall be made under the supervision of the City's Authorized Stormwater Representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the Applicant's or Owner's or Lessee's expense in a manner satisfactory to the City, in accordance with the City's requirements.

(7) All excavations for Stormwater facility installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

### **8.304 Use of Public Stormwater System**

(1) No unauthorized Person shall uncover, make any connections with or openings into, use, alter, or disturb, any Public Stormwater System or appurtenance thereof without first obtaining written permission from the City.

(2) Stormwater shall be Discharged to Storm Sewers and natural outlets under the authority and regulations of the NPDES Municipal Stormwater Permit Program, administered by the Oregon Department of Environmental Quality.

(3) 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 Public Stormwater System.

(4) It shall be unlawful to Discharge in or into any natural outlet or Stormwater Sewer inlet (catch basin, grate, roof downspout, etc.) within the City of Wilsonville, or in any area under the jurisdiction of said City, any Sewage or other polluted water.

(5) Stormwater shall be protected from soap, wax, or other pollution runoff from vehicle wash facility entrance and exits.

### **8.306 Public Stormwater System – Property Damage Prohibited**

(1) No unauthorized Person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the Public Stormwater System. Any Person violating this provision and as a result thereof damages any part of the Public Stormwater System, shall be subject to arrest and prosecution under the laws of the State of Oregon as set forth in ORS 164.345 through 164.365.

### **8.308 Right of Entry**

(1) Where it is necessary to perform inspections, measurements, sampling and/or

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testing, to enforce the provisions of this code, or where the City's Authorized Stormwater Representative has reasonable cause to believe that there exists upon the premises a condition which is contrary to or in violation of this code which makes the premises unsafe, dangerous or hazardous, the City's Authorized Stormwater Representative is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this code. Provided, however, that if such premises is occupied that credentials be presented to the occupant and entry requested. If such premises are unoccupied, the City's Authorized Stormwater Representative shall first make a reasonable effort to locate the Owner, Lessee, or other Person having charge or control of the premises and request entry. If entry is refused, the City's Authorized Stormwater Representative shall have recourse to the remedies provided by law to secure entry.

- (1) The premises shall be maintained in a safe condition by the Owner or a Person having charge or control of the premises and upon contact by the City's Authorized Stormwater Representative the Owner or a Person having charge or control of the premises shall have a duty to notify City's Authorized Stormwater Representative of any safety rules or unsafe conditions applicable to the premises.
- (2) Not with standing, Section 8.308(1) above, the City's Authorized Stormwater Representative shall be permitted to enter all private properties through which the City holds an easement, according to the terms of the easement. Any Stormwater facility work within said easement shall be done according to the regulation provided in this Code and/or the Public Works Standards.

### **8.310 Discharge of Pollutants**

(1) The commencement, conduct, or continuance of any non-Stormwater Discharge to the Public Stormwater System is prohibited and is a violation of this Chapter, except as described below.

(2) The prohibition shall not apply to any non-Stormwater Discharge permitted or approved under an Industrial or Municipal NPDES Stormwater Permit, waiver, or Discharge order issued to the Person who Discharges and administered by the DEQ, provided that the Person who Discharges is in full compliance with all requirements of the permit, waiver, or Discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any Discharge to the Municipal Separate Storm Sewer System (MS4).

(a) Except as provided in subsection (3), the prohibition shall not apply to the following non-Stormwater Discharges to the Public Stormwater System: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the MS4, uncontaminated pumped groundwater, Discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual Residential car washing, flows from riparian

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habitats and wetlands, de-chlorinated swimming pool Discharges, street wash water, and flows from firefighting.

(b) “Street wash water” is defined for purposes of this section to be water that originates from publicly-financed street cleaning activities consistent with the City’s NPDES Stormwater Permit.

(c) Discharge of flows to the public or private Stormwater system from private washing of sidewalks, streets and parking lots are discouraged to the maximum extent practicable.

(3) The City may require Best Management Practices to reduce Pollutants, or may prohibit a specific Person who Discharges from engaging in a specific activity identified in subsection (2) if at any time the City determines that the Discharge is, was, or will be a significant source of pollution.

### **8.312 Discharge in Violation of Permit**

Any Discharge that would result in or contribute to a violation of an existing or future Municipal NPDES Stormwater Permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other Discharges, is a violation of this Chapter and is prohibited. Liability for any such Discharge shall be the responsibility of the Responsible Party, and such Persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such Discharge.

### **8.314 Waste Disposal Prohibitions**

(1) No Person may cause or contribute to pollution, including but not limited to any refuse, rubbish, Garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, Sediment or Sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations in or to the Public Stormwater System.

(2) Runoff from Commercial or Industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not Discharge directly to a private or Public Stormwater System except as allowed under Section 8.310 of this code; this includes but is not limited to outdoor Commercial, Industrial or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities Discharges directly or indirectly to a private or Public Stormwater System.

### **8.316 General Discharge Prohibitions**

(1) It is unlawful to Discharge or cause to be Discharged directly or indirectly into the Public Stormwater System any of the following:

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- (a) Any Discharge having a visible sheen, or containing floating solids or discoloration (including but not limited to dyes and inks);
- (b) Any Discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic chemicals in toxic concentrations;
- (c) Any Discharge which causes or may cause damage, Interference, or hazard to the Public Stormwater System or the City personnel; and
- (d) Any Discharge containing human sanitary waste or animal feces.

### **8.318 Compliance with Industrial NPDES Stormwater Permits**

Any Person who causes an Industrial Discharge, any Person who causes a Discharge associated with construction activity, or any Person who causes other Discharges subject to any NDPES Stormwater Permit issued by the Oregon DEQ, from which Pollutants may enter the public or private Stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by State and Federal regulations. Proof of compliance with said permits may be required in a form acceptable to the City prior to issuance of any grading, building, occupancy permits or business license.

### **8.320 Compliance with Local, State, and Federal Laws and Regulations**

All users of the Public Stormwater System and any Person or entity whose actions may affect the system shall comply with all applicable local, State and Federal laws and regulations. Compliance with the requirements of this Chapter shall in no way substitute for or eliminate the necessity for compliance with applicable local, State and Federal laws and regulations.

### **8.322 Conflicts with Existing and Future Regulatory Requirements of Other Agencies**

Any provisions or limitation of this Chapter and any rules adopted pursuant hereto are superseded and supplemented by any applicable local, State, and Federal requirements existing or adopted subsequent hereto, which are more stringent than the provisions and limitations contained herein.

### **8.324 Accidental Spill Prevention and Control**

Accidental spills and releases by Persons who are not required to obtain a NPDES Stormwater Permit but who handle, store or use hazardous or toxic substances or Discharges prohibited under Section 8.312 and there is a reportable quantity as defined in OAR 340-142-0050, on their sites shall prepare and submit to the City an Accidental Spill Prevention and Control Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this Section.



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### **8.326 Notification of Spills**

(1) As soon as any Person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, Pollutants, or waste creating a risk of Discharge to the Public Stormwater System, such Persons shall:

- (a) Begin containment procedures;
- (b) Notify proper emergency personnel in case of an emergency;
- (c) Notify appropriate city and/or State officials regarding the nature of the spill; and
- (d) Follow-up with the city regarding compliance and modified practices to minimize future spills, as appropriate.

(2) The notification requirements of this section are in addition to any other notification requirements set forth in local State, or Federal regulations and laws. The notification requirements do not relieve the Person of necessary remediation.

### **8.328 Requirement to Eliminate Illicit Connections**

(1) The City's Authorized Stormwater Representative may require by written notice that a Responsible Party who makes an illicit connection to the Public Stormwater System complies with the requirements of this Chapter to eliminate the illicit connection or secure approval for the connection by a specified date.

(2) If, subsequent to eliminating a connection found to be in violation of this Chapter, the Responsible Party can demonstrate that an Illicit Discharge will no longer occur, that Person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the Responsible Party's expense.

### **8.330 Requirement to Remediate**

Whenever the City finds that a Discharge of Pollutants is taking place or has taken place which will result in or has resulted in pollution of Stormwater or the Public Stormwater System, the City's Authorized Stormwater Representative may require by written notice to the Responsible Party that the pollution is remediated and the affected property restored, to the requirements of this Chapter.

### **8.332 Requirement to Monitor and Analyze**

Whenever the City's Authorized Stormwater Representative determines that any Person engaged

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in any activity which may cause or contribute to Stormwater pollution or Illicit Discharges to the Public Stormwater System, the City's Authorized Stormwater Representative may, by written notice, order that the Responsible Party undertake such monitoring activities and/or analyses and furnish such reports as the City's Authorized Stormwater Representative may deem necessary to demonstrate compliance with this Chapter. The written notice shall be served either by personal delivery or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order. If the City cannot locate the Responsible Party and the Responsible Party is a Person other than the Owner of the property, the City will notify the Owner of the property in writing via personal delivery or certified mail requiring the Owner to monitor the property and furnish such reports as the City's Authorized Stormwater Representative may deem necessary to demonstrate compliance with this Chapter.

### **8.334 Erosion Prevention and Sediment Control**

(1) **Purpose.** These regulations contained herein, together with the Clackamas County Water Environment Services' most current version of the Erosion Prevention and Sediment Control Planning and Design Manual, shall be known as the "City of Wilsonville Erosion Prevention and Sediment Control Standards," may be cited as such, and will be referred to herein as "these Standards." The purpose of these Standards is to establish uniform requirements for Land Development and construction-related activities in order to control the occurrence of Erosion and to prevent the creation, migration and/or transport of Erosion at the source during construction and Land Development.

(2) These Standards shall be administered and enforced by the City Manager or designee. The City Manager shall have the authority to develop and implement procedures, forms, policies, and interpretations for administering the provisions of these Standards.

(3) **ESC Permit Required.** An ESC Applicant must obtain an ESC permit before commencing any ground disturbing activity affecting 500 square feet or greater, cumulatively, throughout the duration of Land Development. The ESC Applicant must list each tax lot encompassed within the area where Land Development occurs, which tax lots will also be listed on the ESC permit. A copy of the approved ESC permit shall be submitted to the City Manager before any clearing or grading shall be allowed to proceed. An ESC Applicant must obtain a DEQ 1200-C permit if a site requires disturbing five acres or more. A copy of the approved 1200-C shall be submitted to the City Manager before any clearing or grading shall be allowed to proceed. DEQ 1200-C permits are obtained directly from DEQ.

(4) **ESC Plan Required.** The ESC Applicant shall submit an ESC Plan for projects requiring an ESC permit prior to commencing any ground disturbing activity. The City Manager or designee shall approve the ESC Plan if it demonstrates compliance with these Standards and the standards set forth in the Clackamas County Water Environment Services' most current version of the "Erosion Prevention and Sediment Control Planning and Design

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Manual” for all Erosion and Sediment control measures.

(5) ESC Plan Implementation. An approved ESC permit shall be implemented and maintained as follows:

- (a) It shall be the duty of the ESC Applicant to inspect the property in conformance with the permit issued to ensure ESC measures are effective.
- (b) The ESC Applicant is responsible to ensure that no Visible and Measurable Erosion and Sediment leaves the permitted site.
- (c) The ESC Applicant shall keep a record of inspections with a brief explanation as to any signs of Erosion or Sediment release and measures taken to prevent future releases as well as any measures taken to clean up the Sediment that has left the site. Records must be made available to the City and DEQ upon request and must be submitted to the City upon final completion of work if so requested by the City.
- (d) During periods of wet weather, disturbed areas of the site and/or stockpiled soil shall be covered by the ESC Applicant by tarps or straws at the end of each day’s operations; all disturbed, unworked areas of the site shall be protected from Erosion
- (e) The ESC Applicant shall remove ESC measures, establish permanent groundcover on all exposed soils; clean and remove trash, construction waste and Sediment deposits before receiving a final ESC inspection approval.

(6) Ineffective Measures and ESC Plan Amendment. If the facilities and techniques in the approved ESC Plan are not effective or sufficient to meet the purposes of this Chapter, based on an on-site inspection, the City Manager or designee may require the ESC Applicant to revise the ESC Plan. Such requirement shall be in writing and shall explain the problem. The written requirement shall be presented to the ESC Applicant and any other related parties.

- (a) The revised ESC Plan shall be submitted by the ESC Applicant not later than three (3) business days of when written notification by the City Manager is received. Receipt of such notice shall be deemed complete three (3) days after simultaneous regular mail and certified mail is deposited in the mail or completed the same day as personal delivery.
- (b) The ESC Applicant shall implement fully the revised ESC Plan not later than three (3) business days after mailing the revised ESC Plan to the City, or within such other time frame as the City Manager may specify.
- (c) In cases where significant Erosion is occurring, the City Manager or designee may require the ESC Applicant to immediately install interim control measures before submittal of a revised ESC Plan.

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(d) If there is a confirmed or imminent threat of significant off-site Erosion, the City Manager or designee shall issue a stop work order, upon issuance of which all work on the development site shall halt. The stop work order shall not be lifted until mitigation measures are implemented that comply with the City of Wilsonville's performance standards for ESC and are approved by the City Manager or designee.

### **8.336 Stormwater – Violation**

(1) Enforcement. The City Manager or designee is authorized and directed to enforce all the provisions of Sections 8.300 through and including 8.334 and may conduct inspections whenever it is necessary to enforce any provisions of Sections 8.300 through and including 8.334 to determine compliance or whenever the City Manager or designee has reasonable cause to believe there exists any violation of Sections 8.300 through and including 8.334. It is the policy of the City to pursue compliance and enforcement against the Responsible Party when a violation of Sections 8.300 through and including 8.334 occurs. When the Owner of a property where a violation occurs is not the Responsible Party, the City will pursue compliance and, when necessary, enforcement, only when the Responsible Party cannot be located or determined.

(2) Inspection and Right of Entry. When it may be necessary to inspect to enforce the provisions of Sections 8.300 through and including 8.334, the City Manager or designee, in accordance with Section 8.308, may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Code. If entry is refused, the City Manager shall have recourse to the remedies provided by Code Section 8.412(2) to secure entry.

(3) Notification. When it is determined that a violation of any provision of Sections 8.300 through and including 8.334 has occurred, the City Manager or designee shall notify the ESC Applicant or Responsible Party in writing of the violation observed. The notice of violation shall be delivered to the ESC Applicant or Responsible Party and posted at the property site of the violation. If the City cannot locate the Responsible Party and the Responsible Party is a Person other than the Owner of the property, the City will notify the Owner of the property in writing via personal delivery or certified mail.

(4) Stop Work Orders. When it is necessary to gain compliance with Sections 8.300 through and including 8.334, the City Manager or designee may issue a written stop work order requiring that all work, except work directly related to the elimination of the violation, be immediately and completely stopped. The Responsible Party shall not resume work until such time as the City Manager or designee provides specific approval in writing. If the City cannot locate the Responsible Party and the Responsible Party is a Person other than the Owner of the property, the City will notify the Owner of the property in writing via personal delivery or certified mail of the stop work order.

(5) Termination of Permit. If an ESC Applicant violates the requirements of Sections 8.300 through and including 8.334, the City Manager or designee may revoke any or all of the ESC Applicant's public works permits, building permits, or other permits within the Land Development area where the violation is occurring. If a Responsible Party violates the

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requirements of Sections 8.300 through and including 8.334, the City Manager or designee may revoke any or all of the Responsible Party's public works permits, building permits, or other permits within the Land Development area where the violation is occurring. The Responsible Party or ESC Applicant may appeal such determination pursuant to WC 8.336(12) herein.

(6) Civil Penalties. In addition to any other civil or criminal penalties, fines, or other enforcement measures allowed under the Wilsonville Code, Oregon law and regulations, or federal law and regulations, upon a determination by the City Manager or designee that a Person has violated any provision of Sections 8.300 through and including 8.334, the City Manager or designee may impose upon the ESC Applicant or Responsible Party a civil penalty. The use of a civil penalty does not prevent other authorized enforcement actions. A civil penalty shall be no less than fifty dollars (\$50) and shall not exceed five thousand dollars (\$5,000) per offense per tax lot in which the violation(s) occurs within the Land Development area, or in the case of a continuing offense, not more than one thousand dollars (\$1,000) for each day of the offense and shall be processed in accordance with the procedures set forth in WC 8.336.

(a) Prior to imposing a civil penalty, the City Manager or designee, upon sending the ESC Applicant or Responsible Party an order to correct the violation(s), will pursue reasonable attempts to secure voluntary correction. Following the date or time by which the correction(s) must be completed as required by the order, the City Manager or designee shall determine whether such correction(s) has/have been completed. If the required correction(s) has/have not been completed by the date or time specified in the notice, the City Manager or designee may impose a civil penalty.

(b) In order to ensure that penalties correspond appropriately with the level of violation, and in consideration of this Section, for any fine above the fifty dollar (\$50) minimum fine, a formula will be used by the City Manager or designee to determine the dollar amount of the civil penalty.

(c) The civil penalty authorized by the Section shall be in addition to:

1) Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement; and

2) Any other actions authorized by law.

(d) Notwithstanding WC 8.336(2)(a) above, the City Manager or designee may impose a civil penalty without having issued an order to correct violation or making attempts to secure voluntary correction where the City Manager or designee determines that the violation was knowing, intentional, or a repeat of a similar violation.

(e) If the City determines in its sole discretion that pursuing the Responsible Party is not feasible or it is in the public interest to pursue the Owner of the property for violations of WC 8.300 to WC 8.334, the City may impose a fine against the Owner pursuant to this subsection (6) after providing the Owner with written notice pursuant to

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WC 8.336(3).

(7) Civil Penalties Notice. The notice of civil penalty shall be served by personal service or shall be sent by registered mail or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three (3) days after the date mailed if to an address within the State, and seven (7) days after the date mailed if to an address outside this State. A notice of civil penalties shall include:

- (a) Reference to the particular code provision or rule involved;
- (b) A short and plain statement of the violation;
- (c) A statement of the amount of the penalty or penalties imposed;
- (d) If the penalty is imposed pursuant to WC 8.336(6)(d), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
- (e) A statement of the party's right to appeal the civil penalty to the City Council.

(8) In imposing a penalty authorized by this Section 8.336, the City Manager or designee shall consider:

- (a) The Person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
- (b) Any prior violations of statutes, rules, orders and permits;
- (c) The gravity and magnitude of the violation;
- (d) Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
- (e) Cost to City;
- (f) The violator's cooperativeness and efforts to correct the violation; and
- (g) Any relevant regulation under the City Code.

(9) Any Person who has been issued a notice of civil penalty may appeal the penalty to the City Council. The provisions of WC 8.336(12) herein shall govern any requested hearing. The burden of proof shall be on the party appealing the penalty.

(10) A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the ESC Applicant or Responsible Party appeals the penalty to

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the City Council pursuant to, and within the time limit established by WC 8.336(12). If the ESC Applicant or Responsible Party appeals, the decision will become final, if at all, upon issuance of the City Council's decision affirming the imposition of the administrative civil penalty.

(11) Unpaid Penalties. Failure to pay a civil penalty imposed pursuant to this Section 8.336 within fourteen (14) days after the penalty becomes final shall constitute a violation of this Section 8.336. The City Manager or designee shall assess the property the full amount of the unpaid fine, notify the ESC Applicant or Responsible Party of such assessment, and shall enter such an assessment as a lien in the City lien docket. The lien shall be enforced in the same manner as all City liens. Interest shall commence from the date of entry of the lien in the lien docket.

(a) In addition to enforcement mechanisms authorized elsewhere in this Code, failure to pay an administrative civil penalty imposed pursuant to WC 8.336(6) shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

(12) Appeal Procedures.

(a) Filing deadline. A Person appealing a decision of the City Manager or designee shall file a written notice of appeal with the City Recorder within ten (10) calendar days from the date of mailing of the notice sent pursuant to WC 8.336(7).

(b) Notice of appeal content. The written notice of appeal shall include:

- 1) The name and address of the appellant;
- 2) A statement of the authority or jurisdiction for the appeal including specific code sections authorizing the appeal;
- 3) A statement of the appellant's standing or right to be heard;
- 4) The nature of the decision being appealed;
- 5) A copy of the decision being appealed;
- 6) A short and plain narrative statement including the reason(s) the original decision is alleged to be incorrect, with reference to the particular sections of the applicable code sections; and
- 7) The result the appellant desires on appeal.

(c) An appellant who fails to file such a statement with the information required in Subsection (12)(b) within the time permitted waives the objections, and the

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appeal shall be dismissed without a hearing.

(d) If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal; however, any stop work order will remain in effect. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, a notice of suspension.

(e) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Council within thirty (30) days of the receipt of the notice of intent to appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(f) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Council deems appropriate. The City may provide a response to the appeal for consideration by the City Council. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The City may also present testimony and oral arguments as well. If the appellant is represented by counsel, the City Attorney or designee will represent the City. The rules of evidence as used by courts of law do not apply.

(g) The City Council shall issue a written decision within ten business (10) days of the hearing date. The decision of the City Council after the hearing is final may include a determination that the appeal fee be refunded to the ESC Applicant or Responsible Party upon a finding by the City Council that the appeal was not frivolous.

(13) Abatement of Violation.

(a) Summary Abatement Authorized. The City Manager or designee may determine that the failure or non-existence of Stormwater control measures as required by this Section 8.300 through and including 8.334 constitute a violation presenting an immediate threat of injury to the public health, the environment, or public or private property. Such violations shall be subject to the requirements and enforcement measures stated in Sections 8.300 through and including 8.336. In cases where the City Manager or designee determines it is necessary to take immediate action in order to meet the purposes of this Section 8.300 through and including 8.336, Summary Abatement of such violation is authorized.

(b) Notification Following Summary Abatement. When Summary Abatement is authorized by Sections 8.300 through and including 8.336, the decision regarding whether or not to use Summary Abatement shall be at the City Manager's or designee's discretion. In case of Summary Abatement, notice to the ESC Applicant or Responsible Party prior to abatement is not required. However, following Summary Abatement, the City Manager or designee shall post upon the affected site the abatement notice describing the action taken to abate the violation and shall cause a notice to be mailed to the ESC Applicant or Responsible Party at the ESC Applicant's



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or Responsible Party's address as recorded in the county assessment and taxation records for the property in question.

(c) Financial Responsibility.

1) Whenever a violation is abated under this Subsection 8.336(13), the City Manager or designee shall keep an accurate account of all expenses incurred.

2) The City Manager or designee shall file a statement of such costs with the City Finance Department. Upon receipt of the statement, the Finance Director or designee shall mail a notice to the ESC Applicant or Responsible Party, stating the City's intent to assess the property in question the amount due plus charges to cover the costs of processing.

3) Lien. In the event that amount due set forth in the notice is not paid in full within thirty (30) days of the date of notice, the City Finance Director shall enter the amount of the unpaid balance, plus charges to cover administrative costs in the Docket of City liens which shall therefore constitute a lien against the property.

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### INDUSTRIAL WASTEWATER REGULATIONS

#### **8.400 General Provisions**

(1) Purpose and Policy. This Chapter sets forth uniform requirements for Users of the POTW for the City of Wilsonville and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] Section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403). The objectives of this Chapter are:

- (a) To prevent the introduction of Pollutants into the POTW that will interfere with its operation;
- (b) To prevent the introduction of Pollutants into the POTW, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the POTW;
- (c) To protect both POTW personnel who may be affected by Wastewater and sludge in the course of their employment and the general public;
- (d) To promote reuse and recycling of Industrial Wastewater and sludge from the POTW;
- (e) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements and any other Federal or State laws which the POTW is subject thereto.
- (f) This Chapter authorizes the issuance of individual City-issued industrial wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires User reporting.

#### **8.401 Applicability**

This Chapter shall apply to all Users of the POTW, whether inside or outside of the City limits, by contract, permit, or agreement with the City.

#### **8.402 General Sanitary Sewer Use Requirements**

- (1) Prohibited Discharge Standards.
  - (a) General Prohibitions. No User shall introduce or cause to be introduced into the POTW any Pollutant or Wastewater which will cause Interference or Pass Through. These general prohibitions apply to all Users of the POTW whether or not they are subject to Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.

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(b) Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following Pollutants, substances, or Wastewater:

- 1) Pollutants which create fire or explosion hazard in the POTW, including but not limited to 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.
- 2) Solid or viscous substances in amounts which will obstruct the flow in the POTW resulting in Interference.
- 3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through.
- 4) Waste streams having a pH less than 5.5 or more than 10.0, or which may otherwise cause corrosive structural damage to the POTW, City personnel or equipment. In cases where pH is continuously monitored, a violation is deemed to have occurred if the pH falls outside the 5.5 to 10.0 range more than 60 minutes in any one calendar day beginning at midnight and/or more than seven hours 26 minutes in any one calendar month, except that any Discharge below 5.0 or above 11.0 is a violation.
- 5) Pollutants, including oxygen- demanding Pollutants (BODs, etc.) released at a flow rate and/ or Pollutant concentration- which, either singly or by interaction with other Pollutants, to Pass Through or Interfere with the POTW, any Wastewater treatment or sludge process, or constitute a hazard to humans or animals.
- 6) Noxious of 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 Sanitary Sewers for maintenance and repair.
- 7) 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.
- 8) 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 Waste Discharge Permit. Color (in combination with turbidity) shall not cause the Treatment Plant Effluent to reduce

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the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life.

9) 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).

10) Any Wastewater containing any radioactive waste or isotopes except as specifically approved by the Public Works Director in compliance with applicable State and Federal laws and regulations.

11) 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.

12) Any trucked or hauled Pollutants.

13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, deionized water, Non-contact Cooling Water and unpolluted Industrial Wastewater, unless specifically authorized by the Public Works Director.

14) Sludges, screenings, or other residues from the pretreatment of Industrial wastes.

15) Medical Wastes, except as specifically authorized by the Public Works Director in a City-issued industrial wastewater discharge permit.

16) Material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfered with the POTW.

17) Material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Public Works Director.

18) Wastewater causing, alone or in conjunction with other sources, the Treatment Plant Effluent to fail toxicity test.

19) Recognizable portions of the human or animal anatomy.

20) Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.

21) Any Wastewater from dry cleaning machines.

22) Wastewater discharging from Dental facilities which contain

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mercury shall be provided with an approved amalgam separator.

23) Wastes prohibited by this section shall not be processed or stored in such a manner that these wastes could be Discharged to the POTW.

(2) National Categorical Pretreatment Standards.

(a) Users must comply with the Categorical Pretreatment Standards found in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein. The City shall recognize any variance to the Categorical Standards authorized by the DEQ under 40 CFR 403.13 for fundamentally difference factors from those considered by the EPA when developing the Categorical Pretreatment Standard.

(b) When Wastewater subject to a Categorical Pretreatment Standard is mixed with Wastewater not regulated by the same standard, the Public Works Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403 .6(e) using the combined waste stream formula.

(c) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a Pollutant in Wastewater, the City may impose equivalent concentration or mass limits in accordance with Section (1) and (2) of this section.

1) Equivalent Concentration Limits: When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the City may convert the limits to equivalent limitations expressed either as mass of Pollutant Discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

2) The City may convert the mass limits of the Categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Public Works Director.

When converting such limits to concentration limits, the City will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 8.402(6) of this Chapter. In addition, the City will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available.

3) Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section 8.402(2) in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

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(d) Many Categorical Pretreatment Standards specify one limit for calculating maximum daily Discharge limitations and a second limit for calculating maximum Monthly Average Limits, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(e) Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the City within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the City of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

(3) State Requirements. Users must comply with State requirements and limitations and Discharges to the POTW shall be met by all Users which are subject to such limitations in any instance in which they are more stringent than Federal requirements and limitations or those in this Chapter.

(4) Local Limits.

(a) Authority to Establish Local Limits: The City is authorized to establish Local Limits pursuant to 40 CFR 403.5(c). The Public Works Director may develop BMP's by ordinance or in individual City-issued industrial wastewater discharge permits to implement Local Limits and 8.402.

(b) Numerical Local Limits.

1) No nonresidential User shall Discharge Wastewater containing restricted substances into the POTW in excess of limitations specified in its City-issued industrial wastewater discharge permit or adopted, by resolution, by the City. The Public Works Director 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.

(c) At their discretion, the Public Works Director 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 City-issued industrial wastewater discharge permit.

(d) Specific effluent limits shall not be developed and enforced without individual notices to Persons or groups who have requested such notice and an

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opportunity to respond.

(5) City's Right to Revision. The City reserves the right to establish, by ordinance or in a City-issued industrial wastewater discharge permit, more stringent limitations or requirements or Discharges to the POTW if deemed necessary to comply with the objectives presented in this Chapter.

(6) 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 Requirement. The City may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or regulations, or in other cases when the impositions of mass limitation is appropriate.

(7) Authority to Condition or Deny Industrial Discharge. The City reserves the right to Condition or deny any, or all Industrial Discharges to the City Sanitary Sewer system.

### **8.404 Pretreatment of Wastewater**

(1) Pretreatment Facilities.

(a) Users shall provide necessary Wastewater treatment as necessary to comply with this Chapter and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits and the prohibitions set out in Section 8.402, within the time limitations specified by the Public Works Director, EPA, or the State, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility.

(b) 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 Chapter.

(2) Additional Pretreatment Measures.

(a) Whenever deemed necessary, the Public Works Director may require Users to restrict their Discharge during peak flow periods, designate that certain Wastewater be Discharge only into specific Sanitary 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 POTW and determine the User's compliance with the requirements of this Chapter.

(b) The City may require any Person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A City-issued industrial wastewater discharge

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permit may be issued solely for flow equalization.

(c) Users with the potential to Discharge flammable substances may be required to install and maintain an approved combustible gas detection meter, even though a City-issued industrial wastewater discharge permit is not issued.

(3) Accidental Discharge/Slug Discharge Control Plans. The City shall evaluate whether each SIU needs a Discharge/Slug Discharge control plan or other action to control Slug Discharges. The City may require any User to develop, submit for approval and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the City may develop such plan for any User.

(a) An accidental Discharge/Slug Discharge plan shall address, at a minimum, the following:

1) Description of Discharge practices; including non-routine batch Discharges.

2) Description of stored chemicals.

3) Procedures for immediately notifying the Public Works Director of any accidental or Slug Discharge, as required by this Chapter;

(4) Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic Pollutants, including solvents, and/or measures and equipment for emergency response.

(5) Failure to comply with Spill/slug control plan conditions shall subject the permittee to enforcement action.

### **8.406 Industrial Wastewater Discharge Permit**

(1) Authority to Require Data Disclosure. When requested by the Public Works Director, a User whether operating under a City-issued industrial wastewater discharge permit or not; and whether the User meets the criteria of a Significant Industrial User or not; the User must submit information on the nature and characteristics of all production processes; material storage, and their Wastewater generated on site. The User must submit this data within thirty (30) days of the request. The Public Works Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update this information.

(2) Wastewater Discharge Permit Requirement.

(a) SIU Wastewater Discharge Permit Required. No Significant Industrial Users shall Discharge to the POTW without first obtaining an individual City-issued



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industrial wastewater discharge permit from the Public Works Director, except that a SIU that has filed a timely application pursuant to Section 8.406(3) of the Chapter may continue to Discharge for the period of time specified therein.

(b) **Other Users May Obtain City-Issued Industrial Wastewater Discharge Permit:** The Public Works Director may require other Users, to obtain individual City-issued industrial wastewater discharge permits as necessary to carry out the purposes of this Chapter.

(c) **Violation of City-Issued Industrial Wastewater Discharge Permit.** Any violation of the terms and conditions of a City-issued industrial wastewater discharge permit shall be deemed a violation of this Chapter and subjects the industrial wastewater discharge permittee to the sanctions set out in Sections 8.502 through 8.506 of this Chapter. Obtaining a City-issued industrial wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(3) **Permitting Existing Connections.** Any User required to obtain an individual Discharge permit who was discharging Wastewater into the POTW prior to the effective date of this Chapter and who wishes to continue such Discharges in the future, shall within ninety (90) days after said date, apply to the City for an industrial wastewater discharge permit in accordance with Section 8.406(5) below, and shall not cause or allow Discharges to the POTW to continue after one hundred eighty (180) days of the effective date of this Chapter except in accordance with the permit issues by the Public Works Director.

(4) **Permitting New Connections.** Any SIU proposing to begin or recommence discharging Industrial waste into the POTW must obtain a City-issued industrial wastewater discharge permit prior to beginning or recommending such Discharge. An application for this City-issued industrial wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any Discharge will begin or recommence.

(5) **Industrial Wastewater Discharge Permit Application Contents.** All Users required to obtain City-issued industrial wastewater discharge permit must submit a permit application. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision. The City may require Users to submit all or some of the following information as part of a permit application:

(a) **Identifying Information.** The name, mailing address and location (if different from mailing address) of the facility, including the name of the operator and Owner or Lessee, Contact information, descriptions of the activities, facilities, and plant production processes on the premises;

(b) **Environmental Permits.** A list of any environmental control permits held by or for the facility;

(c) **Description of Operations.** A brief description of the nature, average rate

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of production (including each product produced by type, amount, processes and rate of production) and Standard Industrial Classification (SIC) or North American Industry Classification System (NAIS) of the operations carried out by such User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes, codes for Pretreatment the industry as a whole and any processes for which Categorical Pretreatment Standards have been promulgated;

(d) Types of waste generated and a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally Discharged to the POTW;

(e) Number and type of employees, and hours of operation, and proposed or actual hours of operation;

(f) Type and amount of raw materials processed (average and maximum per day);

(g) Site plans, floor plans, mechanical and plumbing plans, and details to show all Sewers, floor drains and appurtenances by size, location and elevation and all points of Discharge;

(h) Time and duration of the Discharge;

(i) The location for monitoring all wastes covered by the permit;

(j) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams as necessary to use the combined waste stream formula in 40 CFR 403.6(e).

(k) Measurement of Pollutants.

1) The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

2) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the City, of regulated Pollutants in the Discharge from each regulated process.

3) Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

4) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 8.410(10) of this Chapter. Where the Standard requires compliance with a BMP or pollution

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prevention alternative, the User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard.

5) Sampling must be performed in accordance with procedures set out in Section 8.410(11) of this Chapter.

(l) Any other information as may be deemed by the Public Works Director to be necessary to evaluate the permit application.

(6) Application Signatories and Certification.

(a) All City-issued industrial wastewater discharge permit applications, User reports and certification statements must contain the following certification statement and be signed by an authorized representative of the User:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

(c) A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the signed certification statement in Section 8.410(14).

(7) City-Issued Industrial Wastewater Discharge Permit Decisions. The Public Works Director will evaluate the data furnished by the User and may require additional information. Within sixty (60) days of receipt of a complete permit application, the Public Works Director will determine whether or not to issue an industrial wastewater discharge permit. The City may deny any application for an industrial wastewater discharge permit.

### **8.408 Industrial Wastewater Discharge Permit Issuance by the City**

(1) Permit Duration. City-issued industrial wastewater discharge permits shall be issued for a specific time period not to exceed five (5) years. A City-issued industrial wastewater discharge permit may be issued for a period less than five (5) years at the discretion of the Public Works Director. Each permit will indicate a specific date on which it will expire.

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(2) Permit Contents. City-issued industrial wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Public Works Director to prevent Pass Through or Interference and to protect the quality of the water body receiving the Treatment Plant Effluent, protect worker health and safety, facility sludge management and disposal, and protect against damage to the POTW.

(a) City-issued industrial wastewater discharge permits must contain:

1) A statement that indicates City-issued industrial wastewater discharge permit issuance date, expiration date and effective date;

2) A statement that the City-issued industrial wastewater discharge permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new Owner or operator with a copy of the existing permit;

3) Effluent limits, including Best Management Practices, based on applicable standards in Federal, State, and local law;

4) Self-monitoring, sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of Pollutants (or Best Management Practices) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;

5) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local laws; and

6) Requirement to control Slug Discharges, if determined by the Public Works Director to be necessary. Significant Industrial Users are required to notify the Public Works Director immediately of any changes at its facility affecting the potential for a Slug Discharge.

(b) City-issued industrial wastewater discharge permits may contain, but need not be limited to, the following:

1) Limits on the average and/or maximum rate of Discharge, time of Discharge, and/or requirements for flow regulation and equalization;

2) Requirements for the installation of Pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of Pollutants into the treatment works;

3) Requirements for the development and implementation of spill control plans or other special conditions including management practices

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necessary to adequately prevent accidental, unanticipated, or routine Discharges;

4) Development and implementation of waste minimization plans to reduce the amount of Pollutants Discharged to the POTW;

5) The unit charge or schedule of User charges and fees for the management of the Wastewater Discharged into the POTW;

6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

7) A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the permit; and/or

8) Other conditions as deemed appropriate by the Public Works Director to ensure compliance with this Chapter; and State and Federal laws, rules, and regulations; the term of the permit.

(3) Permit Issuance Process.

(a) Permit Appeals. Any Person including the Industrial User, may petition the City to reconsider the terms of the permit within ten (10) days of the issuance of the final permit.

(b) Failure to submit a timely petition for review shall be deemed a waiver of the administrative appeal.

(c) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative conditions, if any, it seeks to place in the permit.

(d) The effectiveness of the permit shall not be stayed pending the appeal.

(e) If the City fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an industrial wastewater discharge permit, not to issue a permit, or not modify a permit shall be considered final administrative action for purposes of judicial review.

(f) Aggrieved parties seeking judicial review of administrative permit decisions must do so by complaint with the Circuit Court for Clackamas County, State of Oregon within thirty (30) days of the final administrative decision.

(4) Permit Modifications. The Public Works Director may modify the permit for good cause and at any time including, but not limited to, the following:

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- (a) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
  - (b) To address signification alterations or additions to the Industrial User's operation, processes, or Wastewater volume or character since the time of permit issuance;
  - (c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized Discharge;
  - (d) Information indicating that the permitted Discharge poses a threat to the POTW, City personnel, of the receiving waters;
  - (e) Violation of the terms or conditions of the City-issued industrial wastewater discharge permit;
  - (f) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;
  - (g) Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to 40 CFR 401.13;
  - (h) To correct typographical or other errors in the permit;
  - (i) To reflect a transfer of the facility ownership and/or operation to a new Owner/operator/Lessee.
- (5) Permit Transfer.
- (a) City-issued industrial wastewater discharge permits may be transferred to a new Owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Public Works Director and the Public Works Director approves the permit transfer. Failure to provide advance notice of a transfer renders the permit void as of the date of facility transfer, and the new Owner will be consider in violation of the City Codes for discharging without a permit. The notice must include a written certification to the new Owner which:
    - 1) States that the new Owner has no immediate intent to change the facility's operations and processes;
    - 2) Identifies the specific date on which the transfer is to occur; and
    - 3) Acknowledges full responsibility for complying with the existing permit.

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(6) Permit Revocation.

(a) City-issued industrial wastewater discharge permits may be revoked for the following reasons:

- 1) Failure to notify the City of significant changes to the Wastewater prior to the changed Discharge;
- 2) Failure to provide prior notification to the City of changed conditions pursuant to Section 8.410(5);
- 3) Misrepresenting or failure to fully disclose all relevant facts in the City-issued industrial wastewater discharge permit application;
- 4) Falsifying self-monitoring reports;
- 5) Tampering with monitoring equipment;
- 6) Refusing to allow the City timely access to the facility premises and records;
- 7) Failure to meet effluent limitations;
- 8) Failure to pay fines;
- 9) Failure to pay Sewer charges;
- 10) Failure to meet compliance schedules;
- 11) Failure to complete a Wastewater survey or the City-issued industrial wastewater discharge permit application;
- 12) Failure to provide advance notice of the transfer of business ownership of a permitted facility;
- 13) Violation of any Pretreatment Standard or Requirement or any terms of the permit or this Chapter;
- 14) Upon cessation of operations; or
- 15) Upon issuance of a new City-issued industrial wastewater discharge permit to the User.

(7) Permit Renewal. A User with an expiring City-issued industrial wastewater discharge permit shall apply for industrial wastewater discharge permit renewal by submitting a complete permit application, in accordance with Section 8.406 of this Chapter, a minimum of

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ninety (90) days prior to the expiration of the User's existing City-issued industrial wastewater discharge permit. The existing permit shall remain in effect until the renewed permit is issued, providing the User has submitted the renewal application ninety (90) days prior to the expiration of the User's existing City-issued industrial wastewater discharge permit. If the User did not comply with the renewal application submittal criteria, the User will not be authorized to continue discharging past the expiration date of the existing permit without the written authorization of the City.

(8) Regulation of Wastewater Received From Other Jurisdictions.

(a) The City may accept Wastewater from individual Industrial Users located in other jurisdictions, or other municipalities under the following conditions:

1) Municipalities – the municipality must develop and implement a Sanitary Sewer use ordinance that meets, or exceeds, the Wilsonville Industrial Wastewater Regulations, Chapter 8. The municipality must submit their request in writing and the request for Extra-Jurisdictional Wastewater treatment a list of Industrial Users within their jurisdiction, the nature and volume of the Industrial Discharges, the combined Discharge from the municipality that will be treated by the Wilsonville Wastewater Treatment Plant. Municipalities will not be issued industrial wastewater discharge permits. Municipalities must enter into an Extra-Jurisdictional Agreement between the City of Wilsonville and the requesting municipality.

2) Extra-Jurisdictional Industrial Users – the Industrial User must submit an industrial wastewater discharge permit application to the City. The Industrial User must agree to comply with the terms and conditions of the permit, including right-of-entry for purposes of inspection, and sampling, enforcement actions specified in the permit.

(b) An inter-jurisdictional agreement, as required by paragraph A, above, shall contain the following conditions:

1) A requirement for the contributing municipality to adopt a Sanitary Sewer use ordinance which is at least as stringent as this Chapter and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 8.402 of this Chapter. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the Wilsonville Code Chapter 8 or Local Limits;

2) A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;

3) A provision specifying which Pretreatment implementation activities, including industrial wastewater discharge permit issuance, inspection



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and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing municipality and the City;

4) A requirement for the contributing municipality to provide the City with access to all information that the contributing municipality obtains as part of its Pretreatment activities;

5) Limits on the nature, quality, and volume of the contributing municipality's Wastewater at the point where it Discharges to the POTW;

6) Requirements for monitoring the contributing municipality's Discharge;

7) A provision ensuring the City access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City; and

8) A provision specifying remedies available for breach of the terms of the inter-jurisdictional agreement.

9) Where the contributing municipality has primary responsibility for permitting, compliance monitoring, or enforcement, the inter-jurisdictional agreement should specify that Wilsonville shall have the right to take action to enforce the terms of the contributing municipality's ordinance or to impose and enforce Pretreatment Standards and Requirements directly against the Person who Discharges in the event the contributing jurisdiction is unable or unwilling to take such action.

### **8.410 Reporting Requirements**

(1) Baseline Monitoring Reports.

(a) Users that become subject to new or revised Categorical Pretreatment Standards are required to comply with the following reporting requirements even if they have been designated a Non-Significant Categorical Industrial Users.

(b) Within either 180 days after the effective date of a Categorical Pretreatment Standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to Discharge to the POTW shall submit to the City a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their Discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an

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applicable Categorical Standard shall be required to submit to the City a report which contains the information listed in paragraph (b) below. A New Source shall report the method of Pretreatment it intends to use to meet applicable Categorical Standards. A New Source shall also give estimates of its anticipated flow and quantity of Pollutants Discharged.

(c) Users described above shall submit the information set forth below:

1) All information required in Section 8.406(2) through Section 8.406(7); and

2) Measurement of Pollutant. The City may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for Industrial Pretreatment measures.

(d) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph;

(e) Samples should be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(f) Sampling and analysis shall be performed in accordance with Section 8.410(10);

(g) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the POTW;

(h) Compliance Certification. A statement, reviewed by the User's authorized representative and certified to be a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional Operations and maintenance (O&M) and/or additional Pretreatment is required in order to meet Pretreatment Standards and Requirements;

(i) Compliance Schedule. If additional Pretreatment and/or O&M will be required to meet the Pretreatment Standards; the shortest possible schedule by which the Industrial User will provide such additional Pretreatment and/or O&M. The completion date in this schedule not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 8.410(2) of this Chapter; and

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(j) **Signature and Report Certification.** All baseline monitoring reports must be certified in accordance with Section 8.410(3) and signed by an Authorized Representative.

The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the POTW.

(2) **Compliance Schedule Progress Reports.** The following conditions shall apply to the compliance schedule required by Section 8.410(1) of this Chapter:

(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional Pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(b) No increment referred to above shall exceed nine (9) months;

(c) The User shall submit a progress report to the City no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and

(d) In no event shall more than nine (9) months elapse between such progress reports to the City.

(e) **Reports on Compliance with Categorical Pretreatment Standard Deadline.**

1) Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of Wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the City a report containing the information described in Section 8.406(5) of this Chapter. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 8.402(2), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable Pollutant Discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 8.410(14) of this Chapter. All sampling will be done in conformance with Section 8.410.

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2) Periodic Compliance Reports. All SIUs are required to submit periodic compliance reports even if they have been designated a Non-Significant Categorical Industrial User under the provisions of Section 8.410(14).

(f) Except as specified in Section 8.410(14), all Significant Industrial Users must, at a frequency determined by the City submit no less than twice per year (June and December, or on dates specified, reports indicating the nature, concentration of Pollutants in the Discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

(g) All periodic compliance reports must be signed and certified in accordance with Section 8.410(14) of this Chapter.

(h) All Wastewater samples must be representative of the User's Discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its Discharge.

(i) If a User subject to the reporting requirement in this Section monitors any regulated Pollutant at the appropriate sampling location more frequently than required by the City, using the procedures prescribed in Section 8.410(11) of this Chapter, the results of this monitoring shall be included in the report.

(5) Report of Changed Conditions. Each User must notify the Public Works Director of any significant changes to the User's operations or system which might alter the nature, quality, or volume at least thirty (30) days before the change.

(a) The Public Works Director may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of an industrial wastewater discharge permit application under Section 8.406(5), if necessary.

(b) The Public Works Director may issue an industrial wastewater discharge permit under Section 8.408(7) or modify an existing City-issued industrial wastewater discharge permit under Section 8.408(4) in response to changed conditions or anticipated changed conditions.

(6) Reports of Potential Problems.

(a) In the case of any Discharge, including but not limited to accidental Discharge non-routine, episodic nature, a non-customary batch Discharge, a Slug

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Discharge or Slug Load, that might cause potential problems for the POTW the User shall immediately telephone and notify the City of the incident. This notification shall include the location and Discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

(b) Within five (5) days following an accidental Discharge, the User shall, unless waived by the Public Works Director, submit a detailed written report describing the cause(s) 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 the POTW, natural resources, 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 Chapter.

(c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of an accidental Discharge as described above. Employers shall ensure that all employees who may cause or suffer such a Discharge to occur are advised of all the emergency notification procedures.

(d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

(7) Reports from Un-Permitted Users. All Users not required to obtain a City-issued industrial wastewater discharge permit shall provide appropriate reports to the City as the Public Works Director may require.

(8) Notice of Violation/Repeat Sampling and Reporting.

(a) If sampling performed by a User indicates a violation, the User must notify the City within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation.

(9) Notification of the Discharge of Hazardous Waste.

(a) Any User who commences the Discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division City, and State hazardous waste authorities, in writing, of any Discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the User Discharges more than one-hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream Discharged during that

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calendar month, and an estimation of the mass of constituents in the waste stream expected to be Discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the Discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste Discharged. However, notifications of changed conditions must be submitted under Section 8.410(5) of this Chapter. The notification requirement in this Section does not apply to Pollutants already reported by Users subject to Categorical Pretreatment Standards under the self-monitoring requirements of Sections 8.410(1), 8.410(3), and 8.410(4) of this Chapter.

(b) Persons who Discharge are exempt from the requirements of paragraph A, above, during a calendar month in which they Discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User Discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the City, the EPA Regional Waste Management Waste Division City, and State hazardous waste authorities of the Discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to Discharge any substance not otherwise permitted to be Discharged by this Chapter, a permit issued hereunder, or any applicable Federal or State law.

(10) Analytical Requirements. All Pollutant analyses, including sampling techniques, to be submitted as part of a City-issued industrial wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the Pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the Pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by EPA.

(11) Sample Collection.

(a) Samples collected to satisfy reporting requirements must be based on data

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obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(b) The City shall establish the frequency of monitoring necessary to assess and assure compliance by the User with applicable Pretreatment Standards and Requirements.

(c) Except as indicated in Section (d) and (e) below, the User must collect Wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the Discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple Grab Samples collected during a 24-hour period may be composited prior to the analysis as follows:

1) For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field;

2) For volatile organics and oil and grease, the samples may be composited in the laboratory.

3) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, Grab Samples may be required to show compliance with Instantaneous Limits.

(d) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(e) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 8.410(1) and 8.410(3), a minimum of four (4) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by paragraphs Section 8.410(4), the Industrial User is required to collect the number of Grab Samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(12) Date of Receipt of Reports. Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

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(13) Recordkeeping. Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 8.402(4). Records shall include the date, exact place, method, and time of sampling, and the name of the Person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the City.

(14) Certification Statements.

(a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 8.406(6); Users submitting baseline monitoring reports under Section 8.410(1); Users submitting reports on compliance with the Categorical Pretreatment Standard deadlines under Section 8.410(3); Users submitting periodic compliance reports required by Section 8.410(4); and Users submitting an initial request to forego sampling of a Pollutant on the basis of Section 8.410(4). The following certification statement must be signed by an Authorized Representative:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the following certification statement signed in accordance with the signatory requirements in Section 8.410(14). This certification must accompany an alternative report required by the City:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 CFR \_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ [months, days, year]:

1) The facility described as \_\_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in



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Section 8.006 (81)(b)(1)-(3).

2) The facility complied with all applicable Pretreatment Standards and Requirements during this reporting period; and

3) The facility never Discharged more than 100 gallons of total categorical Wastewater on any given day during this reporting period.

4) The Facility never Discharged concentrated untreated Wastewater.”

### 8.412 Compliance Monitoring

(1) Right of Entry; Inspection and Sampling.

(a) The City, an authorized representative of the EPA and/or authorized representative of the Oregon DEQ shall have the right to enter the premises of any User to ascertain whether the purpose of this Chapter is being met and all requirements are being met. Users shall allow authorized personnel ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(b) Where a User has security measures in force that require proper identification and clearance before entry into their premises, the Industrial User shall make necessary arrangements with its security guards, so that upon presentation of suitable identification, personnel from the City, State and EPA will be permitted to enter, without delay, for the purposes of performing specific responsibilities.

(c) The City, State, and EPA shall have the right to set up or require installation of, on the Industrial User’s property, such devices as are necessary to conduct sampling, and/or metering of the User’s operations.

(d) The City may require the User to install monitoring equipment as necessary. The facility’s sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure Wastewater flow and quality shall be calibrated annually to ensure their accuracy. The location of the monitoring facilities shall provide ample room in or near the monitored facility to allow accurate sampling and preparation of samples and analysis and whether constructed on public or private property, the monitoring facilities should be provided in accordance with the City’s requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the City to perform independent monitoring activities.

(e) Any temporary or permanent obstruction to safe and easy access to the Industrial facility to be inspected and/or sampled shall be promptly removed by the

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Industrial User at the written or verbal request of the Public Works Director and shall not be replaced. The costs of clearing such access shall be borne by the User.

(f) Unreasonable delays in allowing the City access to the User's premises shall be a violation of this Chapter.

(2) Search Warrants. If the Public Works Director has been refused access to a building, structure or property or any part thereof, and if the Public Works Director has probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect as part of a routine inspection program of the City designed to protect the overall public health, safety and welfare of the community, then upon application by the City Attorney, the Municipal Court Judge of the City may issue a search and/or seizure warrant describing herein the specific location subject to the warrant. The warrant shall specify what, if anything, may be search and/or seized on the property described. Such warrant shall be served at reasonable hours by the Public Works Director in the company of a uniformed police officer of the City.

### **8.414 Confidential Information**

Information and data on a User obtained from reports, surveys, City-issued industrial wastewater discharge permit applications, City-issued industrial wastewater discharge permit, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or Pretreatment program, and in enforcement proceedings involving the Person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

### **8.416 Publication of Users in Significant Noncompliance**

(1) The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section and shall mean:

(a) Chronic violations of Wastewater Discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same Pollutant parameter taken during a six (6) month period exceed (by any magnitude) a

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numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 8.402;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of Wastewater measurements taken for each Pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 8.402 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other Pollutants except pH;

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 8.402 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City determines has caused, alone or in combination with other Discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any Discharge of a Pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City exercise of its emergency authority to halt or prevent such a Discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a City-issued industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local Pretreatment program.

### 8.418 Affirmative Defense

(1) Upset.

(a) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (c), below, are met.

(c) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1) An upset occurred and the User can identify the cause(s) of the upset;

2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

3) The User has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:

a) A description of the Indirect Discharge and cause of noncompliance;

b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(d) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.

(e) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

(f) Users shall control production of all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(2) Prohibited Discharge Standards. User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibition and the specific prohibitions in Section 8.402 of this chapter if it can prove it did not know or have

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reason to know that its Discharge alone or in conjunction with other Discharges, would cause Pass Through or Interference and that either:

(a) A local limit exists for each Pollutant Discharged and the User was in compliance with each limit directly prior to and during the Pass Through or Interference; or

(b) No local limit exists, but the Discharge did not change substantially in nature or constituents from the User's prior Discharge when the City was regularly in compliance with the NPDES Waste Discharge Permit, and in the case of Interference, in compliance with applicable sludge use or disposal requirements.

(3) Bypass.

(a) For the purposes of this Section:

1) Bypass means the intentional diversion of waste streams from any portion of a User's treatment facility.

2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (c) and (d).

(c) Bypass Notification.

1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten (10) days before the date of the bypass.

2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Public Works Director within twenty-four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The Public Works Director may waive the written report on a case-by-case basis if the oral

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report has been received within twenty-four (24) hours.

(d) Bypass is prohibited, and the Public Works Director may take enforcement action against an Industrial User for a bypass, unless;

1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintaining during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3) The Industrial User submitted notices as required under paragraph (c) of this section.

4) The Public Works Director may approve an anticipated bypass after considering its adverse effects, if the Public Works Director determines that it will meet paragraph (3)(d)(1) of this Section.

### **8.420 Pretreatment Charges and Fees**

(1) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:

(a) Fees for City-issued industrial wastewater discharge permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's Discharge;

(c) Fees for reviewing monitoring reports and certification statements submitted by Users;

(d) Fees for reviewing and responding to slug color;

(e) Discharge procedures and construction;

(f) Fees for filing appeals;

(g) Fees to recover administrative and legal costs (not included in Section 8.504, Section 8.506 and 8.416) associated with the enforcement activity taken by the City to address IU noncompliance; and

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(h) Other fees as the City may deem necessary to carry out the requirements contained herein.

(2) These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

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### ENFORCEMENT

#### **8.502 Administrative Enforcement Remedies**

(1) Enforcement. In addition to the imposition of civil penalties, the City shall have the right to enforce Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420 by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts. Any Discharge that fails to comply with the requirements of these rules and regulations or provisions of its City-issued industrial wastewater discharge permit may be subject to enforcement actions as prescribed in Section 8.502(2) through Section 8.502(9) below.

(a) The City is hereby authorized to adopt, by ordinance or resolution, an Enforcement Response Plan, with procedures and schedules of fines, to implement the provisions of this Section.

(b) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, sludge disposal, Interference, work health and safety; violation of the City's NPDES Waste Discharge Permit. Enforcement shall generally be escalated in nature.

(2) Notification of Violation. Whenever the City finds that any User has violated or is violating any provision of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a City-issued industrial wastewater discharge permit or order issued hereunder, or any other Pretreatment Requirement, the Public Works Director or designee may serve upon said User a written Notice of Violation. Within ten (10) days of receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Public Works Director. Submission of this plan in no way relieves the User of liability for any violations occurring before or after receipt of this Notice of Violation. Nothing in this section shall limit the authority of the City to take emergency action without first issuing a Notice of Violation.

(3) Consent Orders. The City may enter into Consent Orders, Assurance of Compliance, or other similar documents establishing an agreement with the any User responsible for the noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the document. Such documents shall have the same force and effect as administrative orders issued pursuant to Section 8.502(4) or 8.502(5) below and shall be judicially enforceable.

(4) Show Cause Hearing. The City may order any Industrial User which causes or contributes to any violation(s) of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, City-issued industrial wastewater discharge permits or orders issued hereunder, or any other Pretreatment Requirement to appear before the City and show cause why a proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or



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certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the User. Whether or not the User appears as notified, immediate enforcement action may be pursued following the hearing date. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(5) Compliance Orders. When the City finds that a User has violated, or continues to violate, any provision of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a City-issued industrial wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the User responsible for the Discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, Sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of Pollutants Discharged to the Sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(6) Cease and Desist Orders. When the City finds that a User has violated, or continues to violate, any provision of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a City-issued industrial wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the City may issue an order to the User directing it to cease and desist all such violations and directing the User to:

- (a) Immediately comply with all requirements:
- (b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing of threatening violation, including halting operations and/or terminating the Discharge. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(7) Administrative Fines.

(a) When the City finds that a User has violated, or continues to violate, any provision of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a City-issued industrial wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may fine such User in an amount not to exceed five thousand dollars (\$5,000). Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average Discharge limits, fines may be assessed for each day during the period of violation.

- (b) Assessments may be added to the User's next scheduled Sewer service charge

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and the City shall have such other collection remedies as may be available for other service charges and fees. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of twenty percent (20%) of the unpaid balance, and interest shall accrue thereafter at a rate of seven percent (7%) per month. A lien against the User's property shall be sought for unpaid charges, fines, and penalties.

(c) Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within ten (10) days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(d) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(8) Emergency Suspensions. The City may immediately suspend a User's Discharge and the Industrial User's City-issued industrial wastewater discharge permit, after informal notice to the Industrial User, whenever such suspension is necessary in order to stop an actual or threatened Discharge which reasonably appears to present or cause an imminent endangerment to the health and welfare of Persons. The City may also immediately suspend a User's Discharge and the Industrial User's City-issued industrial wastewater discharge permit, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(a) Any User notified of a suspension of its Discharge activity or City-issued industrial wastewater discharge permit shall immediately stop or eliminate its contribution. In the event of an Industrial User's failure to immediately comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate severance of the Sewer connection to prevent or minimize damage to the POTW, its Receiving Stream, or endangerment to any individuals. The City may allow the User to recommence its Discharge when the User has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings set forth in Section 8.502(9) are initiated against the User. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

(b) Any User which is responsible, in whole or in part, for any Discharge presenting imminent endangerment shall submit a written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Public Works Director prior to the date of any show cause or termination hearing under Section 8.502(4) or 8.502(9).

(9) Termination of Permit. Any User who violates the following conditions is subject to Discharge termination:

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- (a) Violation of City-issued industrial wastewater discharge permit conditions;
- (b) Failure to accurately report the Wastewater constituents and characteristics of its Discharge;
- (c) Failure to report significant changes in operations or Wastewater volume, constituents and characteristics prior to Discharge;
- (d) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring or sampling;
- (e) Violation of the Pretreatment Standards in Section 8.402 of this Chapter.

Such Users will be notified of proposed termination of its Discharge and be offered an opportunity to show cause under Section 8.502(4) above why the proposed action should not be taken.

Exercise of this option by the City shall not be a bar to, or establish a prerequisite for, taking any other action against the User.

(10) Appeals. Any enforcement action by the City may be appealed to the City Council by filing a petition for reconsideration. The petition must show cause why an enforcement action should not be taken.

- (a) Enforcement action appeals must be filed with the City Recorder within ten (10) working days of receipt of the enforcement action.
- (b) The petition for appeal shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the enforcement response and the requirements of the Pretreatment program.
- (c) Upon appeal, the City Council shall first determine whether the appeal shall be heard on the record only, or upon an evidentiary hearing *de novo*. Where an appellant has been afforded an opportunity of an evidentiary hearing by the City, then the appeal shall be limited to a review of the record and a hearing for receipt of arguments regarding the record. Where an appellant has not been afforded an evidentiary hearing, or upon finding that under prejudice should otherwise result, the City Council shall conduct an evidentiary hearing *de novo*.
- (d) Unless otherwise provided by the City Council, an evidentiary hearing *de novo* on appeal shall require a record be kept of the following:

- 1) The record, if any, of the matter before the City.
- 2) A factual report prepared and presented by the City.

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3) All exhibits, materials and memoranda submitted by any party and received or considered in reaching the decision under review.

4) A record of testimonial evidence, if any.

(e) Upon review, the City Council may by order affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review. When the Council modifies or renders a decision that reverses a decision regarding and enforcement action, the Council, in its order, shall set forth its finding and state its reasons for taking the action.

### **8.504 Judicial Enforcement Remedies**

(1) Injunctive Relief. Whenever the City finds that a User has violated or continues to violate the provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, permits or orders issued hereunder, or any other Pretreatment Requirements, the City through the City's attorney, may petition the Circuit Court of Clackamas County for issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the City-issued industrial wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for taking any other action against the User.

(2) Civil Penalties. A User which has violated or continues to violate the provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a City-issued industrial wastewater discharge permit, or any order issued hereunder, or any other Pretreatment Standard or Requirement may be liable to the City for a maximum civil penalty of five thousand dollars (\$5,000) per violation per day. In the case of a monthly or other long term average Discharge limit, penalties shall accrue for each business day during the period of this violation.

(a) The City may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(b) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm, caused by the violation, the magnitude and duration, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the User, and any other factors as the justice requires.

(c) Filing a suit for civil penalties shall not be a bar to, or a prerequisite for, taking any other action against the User.

(3) Criminal Prosecution.

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(a) Any User who willfully or negligently violates any provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, any orders or permits issue hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 per violation per day or imprisonment for not more than one year or both.

(b) Any User who knowingly makes any false statement, representations, or certifications in any application, record, report, plan or other documentation filed or required to be maintained pursuant to Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, or City-issued industrial wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be punished by a fine of not more than \$5,000 per violation per day or imprisonment for not more than one year or both.

(c) Any User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$5,000 per violation, per day, or be subject to imprisonment for not more than one year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(d) In the event of a second conviction, the User shall be punished by a fine not to exceed \$6,000 per violation per day or imprisonment for not more than three (3) years or both.

(4) Remedies Nonexclusive. The remedies provided for in this Chapter are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant User. Enforcement of Pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may take other action against any User when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant User.

### **8.506 Supplemental Enforcement Action**

(1) Performance Bonds. The City may decline to reissue a permit to any User who has failed to comply with the provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a previous City-issued industrial wastewater discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve a consistent compliance.

(2) Liability Insurance. The City may decline to reissue a permit to any Industrial User which has failed to comply with the provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a previous City-issued industrial wastewater

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discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurance sufficient to restore or repair damage to the POTW caused by its Discharge.

(3) Payment of Outstanding Fees and Penalties. The City may decline to issue or reissue a City-issued industrial wastewater discharge permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, a previous City-issued industrial wastewater discharge permit, or order issued hereunder.

(4) Water Supply Severance. Whenever a User has violated or continues to violate provisions of Sections 8.200 through and including 8.214 and/or 8.400 through and including 8.420, orders, or permits issued hereunder, Water services to the Industrial User may be severed and service will only recommence, at the User's expense, after it has satisfactorily demonstrated its ability to comply.

(5) Public Nuisance. Any violation of the prohibitions of effluent limitations of this Chapter, permits, or orders issued hereunder is hereby declared by a public nuisance and shall be corrected or abated as directed by the City. Any Person(s) creating a public nuisance shall be subject to the provisions of Chapter 7 of the Wilsonville City Codes governing such nuisance, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

(6) Informant Rewards. The City may pay up to five hundred dollars (\$500) for information leading to the discovery of noncompliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the Industrial User, the Public Works Director is authorized to disperse up to ten percent (10%) of the collected fine or penalty to the informant. However, a single reward payment may not exceed ten thousand dollars (\$10,000).

(7) Contractor Listing. Users which have not achieved consistent compliance with applicable Pretreatment Standards and Requirements are not eligible to receive a contract for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by an Industrial User found to be in significant violation with Pretreatment Standards may be terminated at the discretion of the City.

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**CITY OF WILSONVILLE, OREGON**

**Industrial Pretreatment Program  
Enforcement Response Plan**

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### **SECTION I. INTRODUCTION**

The General Pretreatment Regulations, 40 CFR 403.8(f)(1)(vi)(A) require POTW's with approved Pretreatment programs to obtain remedies for noncompliance by any Industrial User. Specifically, 40 CFR 403.8(f)(5) requires the POTW to develop and implement an enforcement response plan.

EPA states that a violation occurs when any of the following conditions apply:

- Any requirement of the City's rules and regulations has not been met.
- A written request is not met within the specified time.
- A condition of a permit issued under the authority of rules and regulations is not met within the specified time.
- Effluent limitations are exceeded, regardless of intent or accident.
- False information has been provided by the Discharge.

Each day a violation occurs is considered a separate violation. Each parameter that is in violation is considered to be a separate violation.

Actions that can be taken by the City, in response to violations, are described in this Enforcement Response Plan.

This Enforcement Response Plan is intended to provide guidance to the City Staff for the uniform and consistent enforcement of the City Sewer Use Ordinance to all Users of the system. The Enforcement Response Plan should be considered a guide for making decisions on the appropriate actions to be taken to return the User to full compliance in the shortest possible time while not being excessive. For additional information see the City of Wilsonville Code, Chapter 8.

### **SECTION II. ENFORCEMENT REMEDIES**

#### **A. Preliminary Enforcement Contacts**

It is of mutual interest to the City and the IU to resolve compliance problems with a minimum of formal coercion. As an aid to the communication process surrounding a formal enforcement action, the City will use the following informal responses:

##### 1. Phone Calls

A phone call maybe the initial informal action taken by the City for missed deadlines and other minor incidents of noncompliance as detected by sampling, inspection and/or as soon as a compliance deadline is missed or noncompliance is detected. The City is not



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required to take this action prior to taking other enforcement options.

A written record of the phone conversation is kept and will contain the following information:

- name of company (IU);
- City-issued industrial wastewater discharge permit number;
- name and title of Person contacted;
- date and time; nature of violation;
- items discussed;
- results of conversation; and
- initials or signature of City personnel initiating the phone call.

### 2. Informal Compliance Meeting

An informal compliance meeting may be held to discuss violations which have recurred, violations which remain uncorrected, or violations of a magnitude which warrant more communication between the City and the Industry. The compliance meeting is held specifically to include an authorized representative of the IU (e.g., vice president, general partner, or their duly authorized representative to ensure that he/she is aware that the industry is in noncompliance.

If possible, the compliance meeting should be held before significant noncompliance (SNC) is reached by the Industrial User. The Industrial User should already be aware of the criteria for SNC, and the compliance meeting will reinforce that the result of SNC includes enforcement measures mandated by federal regulations. The industry may in turn communicate any progress or measures it has taken to regain compliance.

## **B. Administrative Enforcement Remedies**

Administrative Enforcement Remedies are actions that may be initiated at the City Staff level and are intended to be used as an escalation of enforcement. These enforcement actions are considered “formal” and are to be in a written format.

### 1. Notice of Violation

The Notice of Violation (NOV) is an appropriate initial response to any violations and may often be the first response. An informal enforcement action is not required prior to issuing a Notice of Violation. The purpose of a NOV is to notify the Industrial User of the detected violation. It may be the only response necessary in cases of infrequent and generally minor violations. As a general rule, the NOV will be issued not later than five (5) business days after discovery of the violation.

The NOV may be issued by the Pretreatment Coordinator.

The NOV will require the IU to submit a written explanation of the violation and a plan for its satisfactory correction within ten (10) days of receipt of the NOV. If the User does not return to

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compliance or submit a plan of correction, the City will escalate to more stringent enforcement responses.

### 2. Administrative Order

An Administrative Order (AO) are enforcement actions requiring the IU to take a specific action within a specific time period, and may require the IU to seek outside assistance or to modify their production process to eliminate continued non-compliance. An Administrative Order is considered an escalation of the enforcement beyond an informal enforcement action and a Notice of Violation. The City is not required to take informal or less severe enforcement actions prior to issuing an Administrative Order. It is recommended that in most cases a Notice of Violation be issued prior to issuing an Administrative Order to assure the IU management are aware of the problem before ordering an action that may impact the productivity of the IU. The terms of an AO may or may not be negotiated with IUs.

#### a. Cease and Desist Order

A Cease and Desist Order directs a User in significant noncompliance (SNC) to cease illegal or unauthorized Discharges immediately or to terminate its Discharge altogether. A Cease and Desist Order should be used in situations where the Discharge could cause Interference of a Pass Through, or otherwise create an emergency situation. The Order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the Cease and Desist Order may be given initially by telephone, with follow-up (within 5 days) by formal written notice.

#### b. Consent Order

The Consent Order combines the force of an AO with the flexibility of a negotiated settlement. The Consent Order is an agreement between the City and the IU normally containing three elements:

- compliance schedules;
- stipulated fines or remedial actions; and
- signatures of the City and industry representatives.

Consent Orders are intended to provide a scheduled plan of action to be taken by the IU (sometimes actions to be taken by the City) to return to compliance. The compliance schedule should identify all significant actions in a step wise order and when each step should be completed. Routine written reports should be required of the IU providing written documentation of the status of the Consent Order at the time of the report. Typically Consent Orders should not exceed six months in overall time, and not specific step to exceed a ninety (90) day period. In some cases the completion of one consent order leads to the issuance of a second or third consent order dependent on the outcome of the previous consent order. Consent orders are effective providing the IU Discharge is not

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contributing to Pass Through or Interference of the POTW. The City may establish interim permit limits or special Discharge requirements while a Consent Order runs its course.

No informal or less severe enforcement action is required to be taken prior to issue of a Consent Order. Before issuing a Consent Order the City should consider the impact the IU's Discharge is having on the POTW (Pass Through or Interference) and the evidence that is used to determine the need for the order. The milestone dates established for completion of steps within the Consent Order become enforceable at the same level of a Discharge limit of the permit or a requirement of the City ordinance.

### 3. Show Cause Order

An order to show cause directs the User to appear before the City, and explain its noncompliance, and who caused why more severe enforcement actions against the User should not go forward. The order to show cause is typically issued after information contacts, NOV's, Consent Orders or Compliance Orders have failed to resolve the noncompliance. However, the Show Cause Order/hearing can also be used to investigate violations or previous orders.

The Show Cause Order will either be hand-delivered or mailed with return receipt required. The Order will indicate the nature of the violations and the proposed enforcement response. At the Show Cause meeting, the Public Works Director will present a factual report prepared as the basis for the proposed enforcement action. The IU will present exhibits, material and memoranda. A record of testimonial evidence will be kept by the City.

Within thirty (30) days following the Show Cause meeting, the Public Works Director will render a decision regarding an enforcement action to be taken, setting forth findings and stating reasons for taking the action. Affirmative defenses to Discharge violations (WC, Section 8.418) will be taken into consideration of the Public Works Director's decision.

Within ten (10) working days of receiving notice of the enforcement action to be taken, the IU may appeal the Public Works Director's decision to the City Council, pursuant to WC 8.502(10).

### 4. Compliance Order

Compliance Orders are similar to Consent Orders, in that, specific actions are mandated and milestone dates are established for the completion of each mandatory action. The primary difference is that a Compliance Order is not negotiated with the IU. The City establishes the mandatory actions and milestone dates without consideration of the IU with the primary focus on protection of the POTW. Compliance Orders may include the acquisition of professional

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assistance, engineering design, additional or replacement Pretreatment equipment, development of Best Management Practices, action plans, increased or special testing and/or self-monitoring requirements, and other activities that the City may deem necessary to returning the IU to full compliance. Compliance Orders may establish interim limits and requirements while the IU is operating under the compliance order. The compliance order should require routine reporting during the course of the compliance order.

No previous enforcement action is required prior to issuance of a compliance order

### 5. Administrative Fines

Administrative Fine are a monetary penalties assessed by the City's Public Works Director for violations of Pretreatment Standards and Requirements, violations of the terms and conditions of the City-issued industrial wastewater discharge permit and/or violations of compliance schedules. Administrative fines are punitive in nature and not related to a specific cost borne by the City. Instead, such fines are intended to recapture the full or partial economic benefit of noncompliance, and to deter future violations. The maximum amount of the fine is \$5,000 for each day that each violation continues.

Administrative Fines are recommended as an escalated enforcement response, particularly when NOV's or administrative orders have not prompted a return to compliance. Whether administrative fines are an appropriate responses to noncompliance also depend greatly on the circumstances surrounding the violation. The City will consider the factors as set forth in Section III of this plan when determining the amount of the fine.

### 6. Emergency Suspension Order

The Public Works Director may suspend an Industrial User's Discharge and the Industrial User's City-issued industrial wastewater discharge permit, without informal notice or previous enforcement action, in order to stop an actual or threatened Discharge which reasonably appears to present or cause an imminent endangerment to the health or welfare of Persons, or an endangerment to the environment. Any Industrial User notified of an emergency suspension must immediately stop or eliminate its Discharge to the POTW. In the event of the Industrial User's failure to immediately comply voluntarily with the suspension order, the City may sever Sewer connection prior to the date of any show cause or termination hearing. The Industrial User must submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrences before Discharge to the POTW can be restored.

### 7. Termination of Permit

Termination of service is the revocation of an Industrial User's privilege to Discharge Industrial Wastewater into the City's Sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of a suspension

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order which compels the User to terminate its Discharge, or by court ruling. Termination of service is an appropriate response to industries which have not responded adequately to previous enforcement responses. Unlike civil and criminal proceedings, termination of service is an administrative response which can be implemented directly by the City. However, the decision to terminate service requires careful consideration of legal and procedural consequences.

Any Industrial User who violates the Wilsonville Code Chapter 8, City-issued industrial wastewater discharge permit, or compliance orders is subject to termination of the City-issued industrial wastewater discharge permit as an enforcement remedy. Non-compliant Industrial Users will be notified in writing of the proposed termination of their City-issued industrial wastewater discharge permit and will be offered an opportunity to show cause why the action should not be taken. The Public Works Director is authorized to terminate an IU's Discharge if it presents or may present an endangerment to the environment or if it threatens to interfere with the operation of the POTW.

In contrast to the Emergency Suspension Order, the Notice of Termination of the Discharge Permit is to be used when significant changes in the Industrial User's operations have occurred without authorization resulting in new Pollutant contributions or volume of Wastewater Discharged. Furthermore, through the course of administering, monitoring and compliance activity, the City may acquire new information which was not available at the time the City-issued industrial wastewater discharge permit was issued. Until corrections have been made, and continuing Discharge compliance can be assured, the City may terminate the IU's permitted right to Discharge into the City's POTW.

### C. **Judicial Enforcement Remedies**

There are four judicial enforcement remedies which are available to the City, as outlined in Wilsonville Codes – Injunctive Relief, Civil Penalties, Criminal Penalties, and Remedies Non-Exclusive.

#### 1. Injunctive Relief

Injunctive relief is the formal process of petitioning the Circuit Court of Clackamas County for the issuance of either a temporary or permanent injunction which restrains or compels the specific performance of the City-issued industrial wastewater discharge permit, order or other required imposed on the activities of the Industrial User. Injunctive relief is carried out by the City Attorney in conjunction with the City Manager, Public Works Director and the Mayor.

#### 2. Civil Penalties

Civil litigation is the formal process of filing lawsuits against Industrial Users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. It is normally pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the City can assess administratively, or when the Industrial User is considered to be recalcitrant and unwilling to cooperate. Civil litigation also includes enforcement measures which require involvement or

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approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is pursued by the City Attorney and only initiated as authorized by the City Council.

### 3. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of Wilsonville Code Chapter 8 provisions that are punishable, upon conviction, by fines and/or imprisonment. The purposes of criminal prosecution are to punish noncompliance established through court proceedings, and to deter future noncompliance. Criminal prosecutions are up to the discretion of the City Attorney and may be filed in municipal court.

### 4. Remedies Nonexclusive

The remedies provided for in the Chapter are not exclusive. The Public Works Director may take any, all, or any combination of these actions against a noncompliant User. Enforcement of Pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Public Works Director may take other action against any User when the circumstances warrant. Further, the Public Works Director is empowered to take more than one enforcement action against any noncompliant User.

## D. **Supplemental Enforcement Remedies**

Supplemental or innovative enforcement remedies are used to complement the more traditional enforcement responses already described. Normally, supplemental responses are used in conjunction with more traditional approaches. The following are provided for in the City Code:

- Performance Bonds
- Liability Insurance
- Payment of Outstanding Fees and Penalties
- Water Supply Severance
- Public Nuisance
- Informant Rewards
- Contractor Listing

## SECTION III – ASSESSMENT OF ADMINISTRATIVE FINES

### A. Base-Penalty Matrix

The following matrix provides a sample of suggested base-penalty (BP) for administrative fines based on the magnitude of the violations. The City should keep in mind that the following suggested fines are not mandatory and should be applied based on the various factors discussed in this section.

<b>Class of Violation</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
Class I	\$5,000	\$2,500	\$1,000
Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100

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### B. Class of Violations

#### Class I:

- \* Un-permitted Discharge or failure to halt Discharge which cause harm to the POTW and/or the environment.
- \* Failure to comply with notification requirements of a spill or Slug Load or upset condition.
- \* Violation of an Administrative Order or compliance schedule.
- \* Failure to provide access to premises or records.
- \* Any violation related to water quality which causes a major harm or poses a major risk of harm to public health or the environment.
- \* Significant Noncompliance (40 CFR 403.8(f)(2)(vii)(A-H).
- \* Process waste stream dilution as a substitute for Pretreatment.

#### Class II:

- \*\* Operation of a Pretreatment facility without first obtaining a City-issued industrial wastewater discharge permit. (No harm to POTW or the environment).
- \*\* Any violation related to water quality which is not otherwise classified.
- \*\* Recurring violations of City-issued industrial wastewater discharge permit limits or Federal Standard.

#### Class III

- \*\*\* Un-permitted Discharge which causes no harm to POTW.
- \*\*\* Failure to operate and maintain a Pretreatment facility.
- \*\*\* Monitoring, record keeping, and reporting violations.
- \*\*\* First-time violation of a local permit limit or Federal Standard regulating the Discharge of Pollutants.

### C. Magnitude of Violations

#### Major:

- pH value less than 5.0 or more than 11.0.
- More than 2.0 times the maximum allowable limit established for regulated Pollutants, other than pH.
- Anything directly attributable to an upset condition or damage of the POTW.
- Recurring failure to meet the terms of a compliance order or recurring failure to correct a known violation.
- Missed compliance milestone or report submittal deadline by more than thirty (30) days without good cause.
- Any other violation meeting the definition of significant noncompliance (See Sections II and III, as well as the Enforcement Response Matrix).

#### Moderate:

- From 1.2 to 2.0 times the maximum allowable limit established for regulated Pollutants, other than pH.
- Third Notice of Violations of a City-issued industrial wastewater discharge permit

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condition or compliance order in a 12 month period.

Minor:

- pH value of 5.0 to 5.5 and 10.0 to 11.0 to 1.2 times the maximum allowable limit for regulated Pollutants, other than pH.
- Second Notice of Violation for the same City-issued industrial wastewater discharge permit condition or compliance order in a 12 month period.
- Missed compliance milestone or report submittal deadline without good cause by up to thirty (30) days.
- Violations detected during site visits which do not results in harm to the POTW or the environment.

### D. Maximum/Minimum Fines

No administrative fine, civil or criminal penalty pursuant to this matrix shall be less than \$100. The maximum fine/penalty may not exceed \$5,000 per each day per violation.

### E. Assessment of Fines/Penalties

#### 1. Assessment Protocol

When determining the amount of an administrative fine or civil penalty to be assessed for any violation, the Public Works Director shall apply the following procedures:

- Determine the class and the magnitude of each violation.
- Choose the appropriate base penalty (BP) from the BP Matrix in paragraph A of this section.
- Starting with the base-penalty (BP), determine the total amount of penalty through application of the formula:

$$BP + [(0.1 \times BP) (P+H+O+R+C)] + EB$$

Where:

BP = Base-Penalty

P = prior significant action taken against the IU. (Significant actions refers to any violation established either with or without admission by payment of a penalty.)

H = compliance history

O = violation repetitive or continuous

R = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act

C = Cooperation and effort put forth to correct the violation

EB = Approximated dollar sum of the economic benefit that the IU gained through noncompliance.

2. Values for (P) shall be as follows:



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- (i) 0 if no prior significant actions or there is insufficient information on which to base a finding.
- (ii) 1 if the prior significant action is one Class Two or two Class Threes;
- (iii) 2 if the prior significant action(s) is one Class One or equivalent;
- (iv) 3 if the prior significant actions are two Class One or equivalents;
- (v) 4 if the prior significant actions are three Class Ones or equivalents;
- (vi) 5 if the prior significant actions are four Class Ones or equivalents;
- (vii) 6 if the prior significant actions are five Class Ones or equivalents;
- (viii) 7 if the prior significant actions are six Class Ones or equivalents;
- (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
- (x) 9 if the prior significant actions are eight Class Ones or equivalents;
- (xi) 10 if the prior significant actions are nine Class Ones or equivalents, of it any of the prior significant actions were issued for any violation of WC, Chapter 8.
- (xii) In determining the appropriate value for prior significant actions as listed above, the Public Works Director shall reduce the appropriate factor by:
  - (1) A value of two (2) if all prior significant actions are greater than three years but less than five years old;
  - (2) A value of four (4) if all the prior significant actions are greater than five years old;
  - (3) In making the above restrictions, no finding shall be less than 0.
- (xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.

### 3. Values for (H) shall be as follows:

(H) = Past history of the IU to take steps to correct violations cited in prior significant actions. In no case shall the combination of (P) and (H) be a value of less than zero.

- (i) -2 if IU took all feasible steps to correct each violation contained in any prior significant action;
- (ii) 0 if there is not prior history or if there is insufficient information on which to

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base a finding.

4. Values for (O) shall be as follows:

**Where (O) = whether the violation was repeated or continuous**

- (i) 0 if the violation existed for one day or less and did not recur on the same day;
- (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.

5. Values for (R) shall be as follows:

Where: (R) = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act.

- (i) 0 if an unavoidable accident, or if there is insufficient information or make a finding.
- (ii) 2 if negligent
- (iii) 6 if intentional; or
- (iv) 10 if flagrant

6. Values for (C) shall be as follows:

Where: (C) is the Cooperation and effort put forth by the IU to correct the violation.

- (i) 2 if IU was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation.
- (ii) 0 if there is insufficient information to make a finding, or if the violation of the effects of the violation could not be corrected.
- (iii) 2 if IU was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

7. Values for (EB) shall be as follows:

Where: (EB) = Approximated dollar sum of the economic benefit that the IU gained through noncompliance. The penalty may be increased by the value assigned to (EB), provided that the sum penalty does not exceed the maximum allowed. In order to ensure that no IU may be able to pollute as a cost of doing business, the Public Works Director is empowered to take more than one enforcement action against any noncompliance IU (WC, Section 8.140(2)).

- (i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;

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- (ii) The Public Works Director need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis.

### **SECTION IV. NON COMPLIANCE DEFINED**

#### **A. Noncompliance**

Noncompliance is any violation of one or more of the, Wilsonville Code, Chapter 8, any of the conditions or limits specified in the IU's City-issued industrial wastewater discharge permit or any compliance order issued by the City. Enforcement action must be initiated for the following instances of noncompliance:

1. Industry failure to submit a permit application form;
2. Industry failure to properly conduct self-monitoring;
3. Industry failure to submit appropriate reports;
4. Industry failure to comply with appropriate Pretreatment Standards by the compliance deadline date;
5. Industry failure to comply with Pretreatment limits as determined from review of self-monitoring reports or City sampling;
6. Industry falsification of information;
7. Sewer use violation of the municipal code.

#### **B. Significant Noncompliance:**

Significant Noncompliance shall be applicable to all Significant Users or any other Industrial User that violates paragraphs (3), (4) or (8) of this Section and shall mean:

1. Chronic violations of Wastewater Discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same Pollutant parameters during a six month period exceeded (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits.
2. Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent (33%) of more of Wastewater measurements taken for each Pollutant parameter taken during a six-month period equal or exceeded by the product of a numeric Pretreatment Standard or Requirement, including Instantaneous Limits multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other Pollutants except pH);
3. Any other violation of a Pretreatment Standard or Requirement (Daily Maximum or longer- term average, Instantaneous Limits or narrative standard) that the City determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of City personnel of the general public);
4. Any Discharge of Pollutant that has caused imminent endangerment to the public

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or to the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a Discharge.

5. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in an individual City-issued industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.

6. Failure to provide within forty five (45) days after the due date, required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

7. Failure to accurately report noncompliance; or

8. Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the Pretreatment program.

### **SECTION V. RANGE OF ENFORCEMENT REPOSSES**

When the City is presented with the need for enforcement response, it will select the most appropriate response to the violation. The City will consider the following criteria when determining a proper response:

- Magnitude of violation;
- Duration of the violation;
- Effect of the violation on the receiving water;
- Effect of the violation on the POTW;
- Compliance history of the Industrial User; and
- Good faith of the Industrial User.

These six criteria are discussed in detail below:

1. Magnitude of the Violation

Generally, an isolated instance on noncompliance can be met with an informal response and a Notice of Violation or Consent Order. However, certain violations or patterns of violations are significant and must be identified as such. Significant Noncompliance (SNC) may be on an individual or long-term basis of occurrence. Categorization of an IU as being in SNC provides the City with priorities for enforcement action and provides a means for reporting on the IU performance history. SNC is a violation which meets one or more of the criteria set forth in Section IV B.

2. Duration of Violation

Violations, regardless of severity, which continue over long periods of time will subject the Industrial User to escalated enforcement actions. For example, an effluent violation

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which occurs in two out of three samples over a six-month period or a report which is more than forty-five (45) days overdue is considered SNC, while a report which is two days late would not be deemed significant.

The City's response to these situations must prevent extended periods of noncompliance from recurring. The City may issue an administrative order for chronic violations. If the Industrial User fails to comply with the administrative order, the City will assess administrative penalties or initiate judicial action. If the prolonged violation results in serious harm to the POTW, the City will also consider terminating services or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

### 3. Effect on the Receiving Water

One of the primary objectives of the national Pretreatment program is to prevent Pollutants from "passing through" the POTW and entering the Receiving Stream. Consequently any violation which results in environmental harm will be met with a SNC categorization and corresponding enforcement action. Environmental harm will be presumed whenever an industry Discharges a Pollutant into the Sewer system which:

- a. Passes through the POTW and causes a violation of the POTW's NPDES Waste Discharge Permit (including water quality standards); or
- b. Has a toxic effect on the receiving waters (i.e. fish kill).

The enforcement response should ensure the recovery from the noncompliance User of any NPDES fines and penalties paid by the City to any party whether governmental or otherwise. If a User's Discharge causes repeated harmful effects, the City will seriously consider terminating service to the User.

### 4. Effect on the POTW

Some of the violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, process, operations, or cause sludge contamination resulting in increased disposal costs. These violations will be categorized as SNC. For example, when the Industrial User's Discharge upsets the Treatment Plant, damages the collection system through pipe corrosion, causes an obstruction or explosion, or causes additional expenses (e.g. to trace a spill back to its source), the POTW's response will include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

### 5. Compliance History of the User

A pattern of recurring violations (even if different program requirements) may indicate whether that the User's treatment system is inadequate or that the User has taken a casual approach to operating and maintaining its treatment system. Accordingly, Users exhibiting recurring compliance problems will be categorized as SNC. Compliance history is an important factor for deciding which of the two or three designated appropriate remedies to apply to a particular violator. For example, if the violator has a good compliance history, the City may decide to use the less severe option.

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### 6. Good Faith of the User

The User's "good faith" in correcting its noncompliance is a factor in determining which enforcement response to invoke. Good faith is defined as the User's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a User's demonstrated willingness to comply will predispose the City to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. For example, if the City's POTW experiences a treatment upset, the City will recover its costs regardless of prior good faith. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner (although compliance with previous enforcement orders is not necessarily good faith).

## **SECTION VI. ENFORCEMENT PROCEDURES**

The City must document procedures to evaluate industry self-monitoring data, reports and notices to accurately determine the compliance status of each significant User. These procedures must identify all violations, including non-Discharge or reporting violations.

This Enforcement Response Plan designates responsibilities for this evaluation task. The task is assigned to the Pretreatment Coordinator since he/ she is familiar with the IU's and the City's Pretreatment program rules and regulations. The Pretreatment Coordinator is responsible to identify the noncompliance and alert the Public Works Director (PWD) of the possible need for enforcement action.

The City will examine all monitoring data and reports within five (5) days of receipt. In order to review reports, the Pretreatment Coordinator will apply the following procedures:

- The Pretreatment Coordinator has established schedules in the City-issued industrial wastewater discharge permits to designate when self-monitoring reports are due. Each self-monitoring report will be checked to see that it is submitted by its due date, and is appropriately signed and certified. Likewise, the Pretreatment Coordinator will check notifications and report requirements.
- All analytical data will be screened by comparing it to categorical or Local Limits or to any additional Discharge standards which may apply.
- All violations will be identified and a record made of the response. At a minimum, this will be accomplished by circling the violation, using a red ink marker.
- The Pretreatment Coordinator, Responsible for screening data, must alert the PWD to the noncompliance. This allows the City to determine its enforcement response in a timely manner.

Industrial waste Discharges violations are usually detected by the following six ways:

- (1) An Industrial User reports a violation.

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- (2) The City’s collection system monitoring and field surveillance detects a possible violation.
- (3) The Treatment Plant process is upset.
- (4) An unauthorized waste disposal procedure is identified during a facility inspection.
- (5) Investigation of a Citizen Concern Action Report.
- (6) Emergency crews (i.e. police, fire, rescue) report a hazardous material incident.

Industrial source investigations will be initiated for each of the examples presented above, and ensuing enforcement actions will be of an escalating nature (see Enforcement Response Matrix). Enforcement will begin with administration remedies (e.g. Notice of Violation, Consent Orders, Compliance Orders). If necessary, civil/criminal penalties will be sought and/or emergency suspension of Sewer service will be ordered. Appropriate fines and penalties (civil/criminal) will be sought, as provided in WC Chapter 8.

The enforcement plan uses a three-level approach to enforcement action toward any noncompliance event.

LEVEL I: Responses represent the enforcement efforts utilized by the City to bring the IIU into compliance before a state of significant noncompliance (SNC) is reached. The following enforcement actions are utilized at this level of response.

<u>Response</u>	<u>City Personnel</u>
1. (Informal) Phone Call	Pretreatment Coordinator
2. (Informal) Compliance Meeting	Pretreatment Coordinator
3. Notice of Violation (WC, Section 8.502(2))	Pretreatment Coordinator
4. Consent Order (WC, Section 8.502(3))	Pretreatment Coordinator

LEVEL II: Responses are taken when an IU has reached significant noncompliance. Level II enforcement action must include the issuance of an Administrative Order, as described below:

<u>Response</u>	<u>City Personnel</u>
1. Compliance Order (WC, Section 8.502(5))	Public Works Director
2. Cease and Desist Order (WC, Section 8.502(6))	Public Works Director City Attorney
3. Emergency Suspension (WC, Section 8.502(8))	Public Works Director City Attorney

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- |  |  |
|--|--|
| 4. Termination of Permit<br>(WC, Section 8.502(9)) | Public Works Director<br>City Attorney |
|--|--|

When an IU is in SNC, the Pretreatment Coordinator will do the following:

1. Report such information to DEQ as a component of the City’s annual Pretreatment program report.
2. Include the IU in the annual published list of industries which were significantly violating applicable Pretreatment Standards and Requirements during the previous 12 months. The procedures the ESM will follow for compiling the list of IU’s, includes:
  - a. Prepare a compliance history from the City’s Pretreatment records for each SIU.
  - b. Review the history of each SIU for either a pattern of noncompliance, or if the SIU has been or continues to be in SNC.
  - c. To the extent that an SIU meets the criteria in (b), above, the SIU will be placed on the list for publication in the largest daily newspaper within the City of Wilsonville.
  - d. The published list of IU’s in SNC will include the following information:
    - I. Duration of violation.
    - ii. Parameters and/or reporting requirements violated.
    - iii. Compliance actions taken by the City.
    - iv. Whether or not the IU is currently in compliance or on a compliance schedule.

**LEVEL III:** This level of enforcement is reserved for the extreme occasion when the IU is in SNC and does not respond to an Administrative Order, does not adhere to compliance schedules, and where fines have not been effective in bringing the IU into compliance with Pretreatment regulations. Level III enforcement may also be used for willful Discharge of Wastewater in amounts which cause Pass Through or Interference, and cases of falsification. The timeframe for initiating Level III enforcement actions will range from immediate (e.g. reasonable potential to cause harm to the public, the POTW, or the environment, or a court ordered injunction for gaining access to an IU’s facility) to not more than sixty (60) days. This level of enforcement requires the consultation of the City Attorney to determine the appropriateness and legal basis for the action to be implemented.

<b><u>Response</u></b>	<b><u>City Personnel</u></b>
1. Injunctive Relief (WC, Section 8.504(1))	City Attorney City Council
2. Civil Penalties (WC, Section 8.504(2))	City Attorney City Council
3. Criminal Prosecution (WC, Section 8.504(3))	City Attorney City Council



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4. Supplemental Enforcement  
(WC, Section 8.506)

Public Works Director, City Attorney,  
City Council

**SECTION VII. TIME FRAMES FOR ENFORCEMENT ACTION AND FOLLOW-UP**

The City will provide timely response to violations. In Section I and Section IV it has been established that the Pretreatment Coordinator will review Industrial User reports within five (5) days of receipt. Similarly, violations observed in the field or upon receipt of compliance information will be responded to within five (5) days. Complex or larger violations may require a longer response time, and communications will be made with the Industrial User (IU) regarding the time of the City's response. All formal enforcement notices will either be hand-delivered or mailed with return receipt required.

After its initial enforcement response, the City will closely track IU's progress toward compliance. This may be done by inspection, as well as timely receipt of required progress reports. The frequency of User self-monitoring may be increased. When follow-up activities indicate that the violation persists or that satisfactory progress is not being made, the City will escalate its enforcement response, using the steps of the enforcement matrix as a guide.

The Pretreatment Coordinator will establish a manual log to record the receipt of required reports. This log will contain 12 sections. Each section will be titled with the name of the month, January through December. The pages in each monthly section will list all of the Industrial Users who are required to report. Under each listed industry will be listed the type of report due and its due date. Following the due date will be a place to write the date the report is actually received. Next to each listed industry, also on the same line which identifies required reports and due dates, will be an area to note a summary of compliance status, including enforcement actions, calculations of administrative fines and/or SNC, and enforcement action timelines.

At the end of the month, the material in the report log will be transferred to a computer file created for each Industrial User for ongoing storage and retrieval. The written records will be placed in a loose-leaf notebook developed to hold all Pretreatment information pertinent to the particular industry.

In summary, the tracking of noncompliance, including SNC will be accomplished as follows:

1. Monitoring reports, inspection reports and compliance reports will be reviewed by the Pretreatment Coordinator within 5 days of receipt. Likewise, all Pretreatment program violations will be identified and documented and the initial (Level 1) enforcement response (e.g. phone call or compliance meeting **and** an NOV or Consent Order) will occur within five (5) days of receipt of reports.
2. Violations classified by the Pretreatment Coordinator as SNC will be followed with an enforceable Level II order to be issued by the Public Works Director within three (3) days of

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receipt or detection of noncompliance.

3. Assisted by the City Attorney, the Pretreatment Coordinator will respond to persistent or recurring violations with an escalated enforcement response (Level III) within sixty (60) days after the initial enforcement action. Violations which threaten health, property or the environment will be treated as an emergency and an immediate enforcement response (e.g. Termination of Permit, Suspension Order, Injunctive Relief) will be initiated.

### **SECTION VIII. RESPONSIBILITIES OF PERSONNEL**

#### **A. POTW Supervisor**

The Wastewater Treatment Plant Supervisor is responsible for the overall operation and maintenance of the POTW, including employee safety, and protection of the Treatment Plant. The Supervisor is also responsible for compliance with the NPDES Waste Discharge Permit for Wastewater Discharge. The Supervisor has the authority to recommend to discontinue Sewer service in emergency situations where there reasonably appears to present an imminent endangerment or substantial endangerment to the health or welfare of Persons. The Supervisor will work under the direction of the Public Works Director.

#### **B. Pretreatment Coordinator (PC)**

The City will have a Pretreatment Coordinator who will be an individual thoroughly familiar with the program requirements and responsible for ensuring implementation of the City's pre-treatment program requirements. The Pretreatment Coordinator is also responsible for the administration and implementation of the Pretreatment program. The Pretreatment Coordinator will screen monitoring data, do inspections, and detect noncompliance. The Pretreatment Coordinator will be the Person typically working with Industrial Users. The Pretreatment Coordinator is responsible for recommending to the Public Works Director any enforcement action and publishing the annual list of significant noncompliance violators. The Pretreatment Coordinator will also review Industrial User reports and make reports of violations. The Pretreatment Coordinator is also responsible to track all actions of enforcement, by establishing time lines and all necessary follow-up and make recommendations to the Public Works Director, City Attorney and City Council for enforcement action. The PC will work under direction of the Public Works Director.

#### **C. Public Works Director (PWD)**

The Public Works Director is the Person designated to supervise and assume responsibility for the overall operations of the City's public works infrastructure, including the POTW, NPDES, NPDES Waste Discharge Permit compliance and the Industrial Pretreatment program. The PWD is primarily involved in the escalation of enforcement responses and determining administrative fines. The Public Works Director works under the direction of the City Manager and supervises the Pretreatment Coordinator.

#### **D. City Attorney**

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The City Attorney will be responsible for advising staff and City Council on Pretreatment enforcement matters. The Attorney works under the direction of the City Council. The City Attorney will also be responsible for preparation and implementation of judicial proceedings.

### E. City Council

The City Council for the City of Wilsonville will be responsible for authorizing any Level III enforcement action taken, except in an emergency. As defined by City Charter, the City Council will be ultimately responsible for effluent quality, sludge use and disposal, NPDES compliance, the issuance of administrative orders, fines and assessments, and any judicial action followed in this Chapter.

## SECTION IX. ENFORCEMENT RESPONSE MATRIX

### A. Definitions

AF	Administrative Fee
CA	City Attorney
CC	City Council of the City of Wilsonville
CDO	Cease and Desist Order. Unilateral order to require immediate IU compliance
CM	Compliance Meeting
CO-1	Consent Order. Voluntary compliance agreement, including specified timeframe
CO-2	Compliance Order. Unilateral order to require IU compliance within specified timeframe
ES	Emergency suspension of IU Discharge and City-issued industrial wastewater discharge permit
ESM	Environmental Services Manager
IU	Industrial User
Level III	When IU does not comply with CO-1 and CO-2, and AF has not been effective in bringing the IU into compliance, this level of enforcement requires the consultation of the CA to determine appropriate legal action which may include; injunctive relief, civil penalties, criminal prosecution
NOV	Notice of Violation
PC	Pretreatment Coordinator
PWD	Public Works Director
SNC	Significant Noncompliance
SCO	Show Cause Order requiring IU to appear and demonstrate why the City should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.
TP	Termination of Permit

### B. Applying the Enforcement Matrix

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The matrix specifies enforcement actions for each type (or pattern) of noncompliance. The Pretreatment Coordinator will select an appropriate response from the list of enforcement actions indicated by the matrix. There are a number of factors to consider when selecting a response from among these actions. Several of the factors are identical to those used in originally establishing the guide:

1. Good faith of the User.
2. Compliance history of the User.
3. Previous success of enforcement actions taken against the particular User.
4. Violation's effect on the receiving waters.
5. Violation's effect on the POTW.

Since the remedies designed in the matrix are all considered appropriate, the city staff and city council must weigh each of the factors outlined above before deciding whether to use a more or less stringent response. City personnel shall consistently follow the enforcement response matrix. To do otherwise sends a signal to Industrial Users and the public that the City is not acting in a predictable manner and may subject the City to charges of arbitrary enforcement decision making, thereby jeopardizing future enforcement. The enforcement response matrix is to be used as follows.

1. Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2.
2. Assess the appropriateness of the recommended response(s) in column 3. First offenders or Users demonstrating good faith efforts may merit a more lenient response. Similarly, repeat offenders or those demonstrating negligence may require a more stringent response.
3. From column 3, apply the enforcement response to the Industrial User. Specify correction action or other responses required of the Industrial User, if any. Column 4 indicates personnel responsible for initiating each response.
4. Follow-up with escalated enforcement action if the Industrial User's response is not received or the violation continues.

**WILSONVILLE CODE****SECTION IX. ENFORCEMENT RESPONSE MATRIX****ENFORCEMENT RESPONSE MATRIX**

<b>Noncompliance</b>	<b>Nature Of Violation</b>	<b>Violation Level</b>	<b>Enforcement Responses</b>	<b>Staff</b>
<b>I. Unauthorized Discharge (No Discharge Permit)</b>				
<b>A. Discharge without a Permit</b>	IU unaware of requirement, no harm to POTW or Environment	I	Phone Call & NOV with Permit Application Form	PC
	IU unaware of requirement, Harm to POTW or Environment	II	CO-2 with AF	PWD
	Recurring Un-permitted Discharge	III	SCO	CA, CC
<b>B. Discharge without a Permit Failure to Renew Existing Permit</b>	IU did not submit permit renewal application within 90 days of permit expiration date	I	Phone Call & NOV with Permit Application Form	PC
	IU did not submit permit renewal application follow NOV and permit application, exceeded 45 days beyond submittal due date.	II	CO-2 with AF	PWD
	IU did not submit permit renewal application follow NOV and permit application, exceeded 60 days beyond submittal due date.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA, CC

**WILSONVILLE CODE****ENFORCEMENT RESPONSE MATRIX (Continued)**

<b>Noncompliance</b>	<b>Nature Of Violation</b>	<b>Violation Level</b>	<b>Enforcement Responses</b>	<b>Staff</b>
<b>II. Discharge Limit Violation</b>				
<b>A. Reported Limit Violation</b>	Sample results exceed numerical permit limit but does not exceed Technical Review Criteria for severity.	I	Phone Call &/or NOV	PC
	Four (4) violations for same Pollutant with three (3) consecutive months	II	CM and CO-1	PWD
	Sample results exceed numerical permit limit (chronic violation) and exceeds the Technical Review Criteria (TRC)	II	CO-2 and AF pending severity of violation with adverse impact to POTW	PC, PWD,
	Recurring Violations resulting in SNC (Significant Noncompliance)	II	CDO with AF	PWD CA,
	Discharge limit violation which causes POTW interference, pass-through or health hazard.	II	CDO with AF	PWD, CA,
	Any discharge causing endangerment to the public or the environment	III	ES and SCO	PWD, CA, CC
<b>B. pH Limit Violations – Grab Sampling</b>	Any excursion detected during a 24-hour period.	I	Phone call & NOV,	PC
	Four (4) violations within 3 consecutive months	I	CM & CO-1	PC
	pH violations resulting in Significant Noncompliance	II	CO with possible AF	PWD, CA,CM
<b>C. pH Limit Violation – continuous</b>	Excursion exceeding 60 min. in 24 hour period (level 1) except that per 40 CFR 403.5(b)(2) any discharge below 5.0 is a violation. Excursions above 11.0 is also a violation.	I	Phone & NOV. ** 4 excursions in one quarter: CM & C)-1	PC
	Excursions exceeding 7 hours and 26 min. during a calendar month > (Level I)	I	Phone call & NOV. **4 excursions in one quarter: CM & CO-1	PC

**WILSONVILLE CODE**

	Daily or monthly violations occurring during 66% or more of a 6 month period. (Level II)	II	CO-2 with AF	PWD
D. pH Limit Violation – resulting in harm to POTW or environment	pH violations resulting harm to POTW or environment are considered significant non compliance	II	If reported IU, CO-2 with possible AF.  If not reported by IU, CDO with AF	PWD, CA

**ENFORCEMENT RESPONSE MATRIX (Continued)**

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
II. Discharge Limit Violation (continued)				
E. Spill or Slug Discharge resulting in mass loading violations	Reported by IU: No damage to POTW, Isolated Occurrence.	I	Phone call & NOV.	PC
	Second occurrence within 6 month period.	I	CO-1	PC
	Reported by IU. Resulting in pass-through interference, or damage to POTW. Isolated occurrence.	II	CO-2 with possible AF	PWD
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA. CC
	Not Reported by IU. No damage to POTW	I	CM and CO-1	PC
	Second occurrence within 6 month period.	II	CO-1 with possible AF	PWD, CA, CM
	Not Reported by IU. Resulting in Interference, pass-through or damage	II	CDO with AF	PWD, CA
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA. CC
III Monitoring and Reporting Violations				
A. Reporting Violations	Report is improperly signed or certified.	I	Phone call & NOV	PC
	Second occurrence within 6 month period	II	CM and CO-1	PC
	Scheduled reports late, 45 days or less, isolated incident	I	Phone call & NOV	PC
	Scheduled reports late more than 45 days.	II	CO-2 with AF	PWD

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	Failure to Submit Reports; or reports are always late.	II	CDO with possible AF	PWD, CA, PC
	Incomplete Reports	I	Phone Call &/or NOV second incident CM and CO-1	
	Failure to Accurately Report noncompliance	II	CO-2 with AF	PWD, CA
	Scheduled reports late more than 60 days	III	SCO	PWD, CA, CC

**ENFORCEMENT RESPONSE MATRIX (Continued)**

<b>Noncompliance</b>	<b>Nature Of Violation</b>	<b>Violation Level</b>	<b>Enforcement Responses</b>	<b>Staff</b>
<b>III Monitoring and Reporting Violations (continued)</b>				
A. Reporting Violations (continued)	Report Falsification	III	Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Monitoring Violations	Failure to monitor all Pollutants as specified by discharge permit	I	Phone Call &/or NOV	PC
	Second occurrence within 6 month period	II	CO-1with a possible AF	PWD, PC
	Improper sampling with evidence of intent	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
	Failure to install monitoring equipment. Delay of 30 days or less, with good cause	I	Phone Call &/or CO-1	PC
	Failure to install monitoring equipment. Delay of more than 30 days.	II	CM andCO-1 with possible AF	PWD
	Pretreatment Equipment and Monitoring Equipment no maintained or out of service, evidence of neglect.	II	CO-2 with possible AF	PWD



**WILSONVILLE CODE****ENFORCEMENT RESPONSE MATRIX (Continued)**

<b>Noncompliance</b>	<b>Nature Of Violation</b>	<b>Violation Level</b>	<b>Enforcement Responses</b>	<b>Staff</b>
<b>III Monitoring and Reporting Violations (continued)</b>				
C. Compliance Schedule in Discharge Permit	Milestone Date missed by 30 days or less	I	Phone Call &/or NOV	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (good cause of delay)	I	CM & CO-1	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (without good cause for delay).	II	CO-2 with possible AF	PWD
	Violation of Compliance Schedules issued to enforcement discharge permit compliance schedule.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
<b>IV. Other Violations</b>				
A. Waste Streams are Diluted in lieu of Pretreatment	Initial Violation	II	CDO with possible AF	PWD, CA
	Recurring Violations	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Failure to meet compliance date for starting construction or attaining final compliance.	No Harm to POTW or environment. Delay, with good cause, less than 90 days.	I	CM and CO-1	PC
	Delay exceeds 90 days	II	CO-2 with possible AF	PWD
C. Failure to Properly Operate and Maintain a Pretreatment Facility	Evidence of neglect of intent	II	CO-2 with possible AF	PWD

**WILSONVILLE CODE****ENFORCEMENT RESPONSE MATRIX (Continued)**

<b>Noncompliance</b>	<b>Nature Of Violation</b>	<b>Violation Level</b>	<b>Enforcement Responses</b>	<b>Staff</b>
<b>V. Violations Detected During Site Visit</b>				
A. Entry Denied by the IU	Entry consent or copies of records denied.	II	Obtain warrant and return to IU for site visit. Follow-up with SCO for TP	PC PWD, CA, CC
B. Illegal Discharge	No Harm to POTW or environment	I	CM and CO-1	PC,
	Discharge causes harm or there is evidence of willful intent or neglect.	II	CDO with possible AF	PWD
	Recurring with evidence of willful intent or neglect.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
C. Improper Sampling	Unintentional sampling at incorrect location	I	Phone Call &/or NOV	PC
	Reoccurring unintentional sampling and incorrect location	II	Phone call &/or NOV	PC
	Reoccurring unintentional using incorrect techniques	II	Phone Call &/or NOV	PC
	Unintentionally using incorrect sample collection techniques	I	Phone Call &/or NOV	PC
D. Inadequate Record Keeping	Inspection finds records incomplete or missing	I	NOV possible CO-1	PC
	Recurrence of records incomplete or missing.	II	CO-2 with possible AF	PWD
E. Failure to report additional monitoring	Inspection finds additional monitoring data	I	NOV with possible CO-1	PC
	Recurrence of failure to report additional monitoring data.	II	CO-2 with possible AF	PWD

## **WILSONVILLE CODE**

### **SUMMARY OF TIME FRAMES FOR RESPONSES**

1. Compliance Reports – reviewed within five (5) days of receipt.
2. All violations will be identified and documented within 5 days of receiving compliance information.
3. **Level I** Enforcement Response (NOV, CO-1) – within five (5) days of violation detection.
4. **Level II** Enforcement Response (CO-2, CDO, EX, TP, SCO) – within thirty (30) days of violation detection.
5. **Level III** Enforcement Response (judicial and supplemental enforcement actions) time frame is subject to case-by-case legal review by the City Attorney, but in no case will the initiation of a Level III action exceed sixty (60) days.
6. Recurring Violations – follow-up enforcement within sixty (60) days.
7. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the Discharge or terminating service.

**Entire Chapter 8 of the Code repealed and replaced by Ordinance No. 654 adopted on August 18, 2008.  
Section 8.700-8.750 Added by Ordinance No. 664, adopted 6/1/09  
Amended by Ordinance No. 689, adopted January 20, 2011 (correct scrivener errors)  
Entire Chapter 8 Amended by Ordinance No. 753, adopted October 24, 2014**

# ATTACHMENT B

## WILSONVILLE CODE

### ENVIRONMENT

#### GENERAL PROVISIONS

##### 8.000 General Provisions – Environment

(1) Chapter 8 of this Code is enacted for the purpose of promoting the general public welfare by ensuring procedural due process in the administration and enforcement of the City's Comprehensive Plan, Design Review, Permitting Process, Building Code, Development Standards and Public Works Standards, and associated state and federal regulations.

(2) This Chapter addresses four (4) key sections: Water Conservation; Public Sanitary Sewer; Stormwater; and Industrial Wastewater regulations. This Chapter sets forth requirements and enforcement mechanisms pertaining to these four (4) sections. Information regarding compliance requirements for each of the four (4) sections is as follows:

(a) Water Conservation: the Water Conservation regulations are found in WC 8.101 through 8.150 and involve the City's regulation of personal and business use of water during emergencies.

(b) Public Sanitary Sewer: the Public Sanitary Sewer regulations are found in WC 8.200 through 8.214 and to any person or business whose property is connected to the Public Sanitary Sewer system. The Public Sanitary Sewer regulations state when a connection to the public sanitary sewer system is required (8.202); the permitting and specifications for such connections (8.206); and construction of public sanitary sewers (8.210); and other regulations found in WC 8.200 through 8.214.

(c) Stormwater: the Stormwater regulations are found in WC 8.300 through 8.336 and applies to any person or business who discharges materials into the City's stormwater system, including run-off from owned property; or who constructs a stormwater facility that connects to or discharges any material, including property run-off, into the City's stormwater system. The Stormwater regulations include construction requirements (8.302); erosion prevention and sediment control requirements (8.334); and enforcement measures (8.336); and other regulations found in WC 8.300 through 8.336.

(d) Industrial Wastewater: the Industrial Wastewater regulations and enforcement are found in WC 8.400 through 8.506 and apply to businesses that are subject to the United States Environmental Protection Agency's (EPA) regulations found in the Code of Federal Regulations (CFR), Title 40, Part 403 regarding pretreatment and discharge of industrial wastewater.

(3) This Chapter shall be known as the Environment ~~Ordinance~~ Chapter and includes those ordinances familiarly referred to as the Water Conservation Ordinance, Public Sanitary Sewer Use Ordinance, ~~Industrial Wastewater Ordinance~~, Storm Water Ordinance, ~~and Garbage Disposal~~ Industrial Wastewater Ordinance, and Environment Enforcement, ~~etc.~~

# WILSONVILLE CODE

~~water~~Water closets or urinals without self-closing valves and, when such leakage or other defects are discovered and not corrected, the City may discontinue service after giving due notice and until repairs are made. If significant deficiencies are not corrected in a timely manner, as defined by the -Public Works Director, the City may introduce enforcement action in conformance with Section 8.150 Violations.

~~(3)~~ ~~\_\_\_\_\_~~ ~~(3)~~ Water must not be allowed to run to waste through any faucet or fixture or kept running any time longer than actually necessary. Sprinkling of lawns, gardens, and parking strips shall be confined to what is actually needed and no running to waste on sidewalks, streets, and gutters shall be permitted. When any such waste is discovered, the ~~water~~Water service to the premises may be discontinued.

## 8.116 Section Not Used

## 8.118 Standards – General.

~~(1)~~ ~~\_\_\_\_\_~~ ~~(1)~~ In all new construction and in all repair and/or replacement of fixtures or trim, only fixtures or trim not exceeding the following flow rates and/or ~~water~~Water usage shall be installed.

The flow rates are found in the Oregon Plumbing Specialty Code as adopted in Wilsonville Code Chapter 9.

~~These rates are based on a presence at the fixture of 40 to 50 PSI.~~

<del>Water closets, tank type</del>	<del>_____</del>	<del>1.6 gallons per flush.</del>
<del>Water closets, flush-o-meter type</del>	<del>_____</del>	<del>1.6 gallons per flush</del>
<del>Urinals, tank type</del>	<del>_____</del>	<del>1.0 gallons per flush</del>
<del>Shower heads</del>	<del>_____</del>	<del>2.5 GPM</del>
<del>Lavatory, sink faucets</del>	<del>_____</del>	<del>2.5 GPM</del>
<del>Metered faucets</del>	<del>_____</del>	<del>0.25 gallons</del>
<del>per use</del>		

~~(2)~~ ~~\_\_\_\_\_~~ ~~(2)~~ Faucets on lavatories located in restrooms intended for the transient public in service stations, park toilet rooms, train stations and similar facilities shall be metering or self-closing.

~~(3)~~ ~~\_\_\_\_\_~~ ~~(3)~~ Any ~~water~~Water connective device or appliance requiring a continuous flow of five GPM of more and not previously listed in this section shall be equipped with an approved ~~water~~Water recycling system.

## 8.120 Section Not Used

## 8.130 Use of Water During Emergency – Prohibited Uses of Water.

## ATTACHMENT C

## Chapter 8 Code Revision – Chart of Applicability of Chapter 8

## Chapter 8 – Environment

Code Section	Who It Applies To	When It Applies	How It Applies	Key Terms	Applicable Permits
<b><u>Water Conservation:</u></b> WC 8.101-8.150	All residents and businesses located within the City of Wilsonville.	Emergency situations, including but not limited to a drought and moratoriums.	Advises residents and businesses how they should use water in extreme circumstances.	Person.	N/A
<b><u>Public Sanitary Sewer Use:</u></b> WC 8.200-8.214	All residents and businesses located within and outside the City limits by contract or agreement with the City, except for properties with a septic system.	When an individual or business has to hook up or discharge to a public sewer system.	Hooking up to sanitary sewer; or using a public sewer system.	Person, Owner, Lessee, Applicant, User, and Residential User.	Plumbing Permit when performing work on the sanitary sewer system on private property (e.g. replacing a shower); Public Works Permit when connecting a sanitary sewer lateral to the public sewer system.
<b><u>Stormwater:</u></b> WC 8.300-8.334 (Incl. Erosion Prevention and Sediment Control)	Anyone with a stormwater facility/conveyance system or discharging pollutants; and construction sites subject to erosion prevention and sediment control requirements.	When an individual has to hook up or discharge to a stormwater system and/or perform construction activities.	Provides connection to public Stormwater system and for uniform regulations of discharge.	Person, ESC Applicant, Owner, Lessee, Responsible Party	Public Works Permit ESC Permit.
<b><u>Stormwater—Violation:</u></b> WC 8.336  (Part of Stormwater Section [8.300-8.336])	Anyone with a stormwater facility/conveyance system and construction sites subject to erosion prevention and sediment control requirements. Anyone who causes a violation of the stormwater regulations or who has authority to direct and control the person causing the violation.	When violations are discovered or reported.	Enforcement procedures depend on the type of violation discovered or reported. Appeal procedures.	Person, ESC Applicant, Owner, Lessee, Responsible Party	N/A

## Chapter 8 Code Revision – Chart of Applicability of Chapter 8

<p><b><u>Industrial Wastewater Regulations:</u></b> WC 8.400-8.420</p>	<p>All industry as it is defined by the US Code of Federal Regulations Title 40, Part 403 (40 CFR 403). The Code language regarding industrial wastewater regulations is from 40 CFR 403 and such language has been approved by DEQ as complying with 40 CFR 403.</p>	<p>All Significant Industrial Users and when Best Management Practices (BMP) are necessary.</p>	<p>Protects wastewater plants, employees working in the collection system, and rivers from discharge through enforcement mechanisms.</p>	<p>Person, User/Industrial User, Significant Industrial Users.</p>	<p>Industrial Wastewater Discharge Permit. BMP Agreement.</p>
<p><b><u>Enforcement:</u></b> WC 8.502-8.506</p>	<p>Anyone subject to Sanitary Sewer and Industrial Wastewater regulations.</p>	<p>When violations are discovered or reported.</p>	<p>Enforcement procedures depend on the type of violation discovered or reported.</p>	<p>Person, User/Industrial User.</p>	<p>N/A</p>
<p><b>Industrial Pretreatment Program Enforcement Response Plan</b></p>	<p>All industry as it is defined by 40 CFR 403.</p>	<p>Guidance to City staff and Users for the uniform and consistent enforcement of City Industrial Wastewater Regulations as applied to all Users of the system.</p>		<p>Person, User/Industrial User, Significant Industrial Users.</p>	<p>Industrial Wastewater Discharge Permit. BMP Agreement.</p>



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> September 6, 2018	<b>Subject: Ordinance No. 826 - 1<sup>st</sup> Reading</b> 2018 Parks and Recreation Comprehensive Master Plan.  <b>Staff Member:</b> Mike McCarty, Parks and Recreation Director  <b>Department:</b> Parks and Recreation	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: September 6, 2018 <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: September 6, 2018 <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: October 15, 2018 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial  <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b> Staff and Consultants provided a review of the Parks and Recreation Comprehensive Master Plan to the City Council at their April 16 and May 7 Work Sessions. City Council provided staff with recommendations which are part of the current document.	
<b>Staff Recommendation:</b> Staff recommends the Council adopt Ordinance No. 826 on first reading.		
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 826 on first reading.		
<b>Project / Issue Relates To:</b>		
<input checked="" type="checkbox"/> Council Goals/Priorities	<input checked="" type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable



**ISSUE BEFORE COUNCIL:**

The City of Wilsonville Parks and Recreation Department entered into a contract with GreenPlay, LLC on April 7, 2017 to help complete a Parks and Recreation Comprehensive Master Plan. Master Plans, once adopted, become an amendment to the City’s Comprehensive Plan, and as such, require a formal adoption process that includes a hearing before the Planning Commission, consideration of conclusionary findings for consistency with Statewide Planning Goals, a recommendation for adoption from Planning Commission to City Council, and eventually hearing and adoption by ordinance provided by City Council.

Staff and Consultants provided a brief PowerPoint presentation on the 2018 Parks and Recreation Comprehensive Master Plan at the Planning Commission Public Hearing on May 9<sup>th</sup>, 2018. At this meeting, the Planning Commission had specific items that they wanted staff to address, including:

- Extensive verbiage concerning the Integrated Pest Management (IPM) Plan (Objective 3.9, pg. 132). In conjunction with this topic, staff further expanded on the Natural Resources Objective (Objective 3.10, pg. 133), combining the Tree City and Bee City Objective with the Natural Resources Objective and adding an action to create and implement a City-wide Urban Forestry Management Plan (Objective 3.10, Action 3.10.c, pg. 133)
- Re-wording and expanding on the subject of synthetic turf fields (Objective 1.8, pg. 127)
- Addressing creation of art features in the parks as a stand-alone action (Objective 1.6, Action 1.6.c, pg. 125)

Planning Commission gave a recommendation for adoption at the August 8, 2018 Public Hearing, subject to minor changes, which have been addressed.

At the City Council work session meetings on April 16, 2018 and May 7, 2018, Council recommended expanding on the Joint Use Agreement with the West Linn-Wilsonville School District (Section IV: Parks and Facilities Inventory and Assessment – School Partnerships, pg. 100; and Objective 3.5, pg. 131), including the addition of an inventory of school district facilities (Appendix D, pg. 255), as well as a desire for implementation of synthetic turf fields (Objective 1.8, pg. 127). Staff has addressed these recommendations.

Staff from the City’s Finance Department, Administration Department, Legal Department, and Parks and Recreation Department met to address implementing further changes with regard to Capitol Cost Estimates and objectives related to City growth. By refining the Capitol Cost Estimates, seeking financial opportunities will be better defined.

**EXECUTIVE SUMMARY:**

The Parks and Recreation Comprehensive Master Plan for consideration tonight specifically addresses existing levels of service (LOS) and recommendations for future parks and park amenities, with possible funding sources and more suggestions for the next ten plus years. This plan was executed with the help of many people over the last 15 months, including significant feedback from stakeholders, focus groups, citizens attending and participating in open forum presentations, a random survey that went out to 3,500 homes in Wilsonville, as well as an online survey, and social media posts.

The goals of this project are to identify and serve current and future parks and recreational needs through an integrated park system that provides adequate open space, recreational services and facilities, trails, and stewardship of natural and cultural resources;. The Plan is also intended to provide an accessible and diverse offering of parks and recreation facilities and programs to all residents of Wilsonville; and to develop an action plan and strategy for prioritizing, phasing, funding, and accomplishing the identified parks and recreation needs.

Conclusionary Findings demonstrating consistency with Statewide Planning Goals are included as **Attachment 1**.

**EXPECTED RESULTS:**

A recommendation to City Council for adoption of the 2018 Parks and Recreation Comprehensive Master Plan was provided by Parks and Recreation Advisory Board on April 19, 2018 and by Planning Commission on August 8, 2018. Subsequent adoption by City Council, will make this Master Plan part of the City’s Comprehensive Plan. Inclusion in the City’s Comprehensive Master Plan allows identified capital and operational improvements to be planned and budgeted for in future rate studies and capital planning plans. From a utility management standpoint, this Master Plan provides a 10 plus year planning tool to ensure reliable delivery of quality, well-maintained, and safe parks for our community.

**TIMELINE:**

- Planning Commission Work Session: April 11, 2018
- Parks and Recreation Advisory Board Meeting: April 19, 2018
- City Council Work Session: April 16<sup>th</sup> and May 7, 2018
- Planning Commission Public Hearing: May 9, 2018
- Planning Commission Public Hearing (continued): August 8, 2018
- City Council Adoption and First Reading of Ordinance: September 6, 2018
- City Council Adoption and Second Reading of Ordinance: October 15, 2018

**CURRENT YEAR BUDGET IMPACTS:**

The total cost of the contract for the Parks and Recreation Comprehensive Master Plan is \$97,249.

**FINANCIAL REVIEW / COMMENT:**

Reviewed by: SCole      Date: 8/27/2018

Because the Parks and Recreation Comprehensive Master Plan will be used as a tool to determine capital funding sources, including possibly revising the Parks System Development Charges (SDCs), Finance Department staff have encouraged small modifications to the Plan that indicate which capital projects are related to growth, for example, a check-mark or an asterisk. Additionally, it would be helpful to a future SDC study if capital projects had some level of cost estimating applied where currently the capital cost estimate is indicated as to be determined.

**LEGAL REVIEW / COMMENT:**

Reviewed by: BAJ      Date: 8/29/2018

**COMMUNITY INVOLVEMENT PROCESS:**

The community has provided vital information at two city-wide meetings held at City Hall, as well as numerous stakeholder and small focus group meetings. A random survey was mailed to 3,500 residents, and an online survey was available to all members of the public.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

Providing amenities and services that the community has requested from the Parks and Recreation Department.

**ALTERNATIVES:**

N/A

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

Ordinance No. 826

Exhibit A - Planning Commission Action and Recommendation

Attachment 1 - Conclusionary Findings

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_a\\_-\\_attachment\\_1\\_-\\_conclusionary\\_findings.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_a_-_attachment_1_-_conclusionary_findings.pdf)

Attachment 2 - Planning Commission Official Record

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_a\\_-\\_attachment\\_1\\_-\\_conclusionary\\_findings.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_a_-_attachment_1_-_conclusionary_findings.pdf)

Exhibit B - 2018 Parks and Recreation Comprehensive Master Plan

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_b\\_-\\_2018\\_parks\\_recreation\\_comprehensive\\_master\\_plan\\_08.21.18.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_b_-_2018_parks_recreation_comprehensive_master_plan_08.21.18.pdf)

**ORDINANCE NO. 826**

**AN ORDINANCE OF THE CITY OF WILSONVILLE ADOPTING THE 2018 PARKS AND RECREATION COMPREHENSIVE MASTER PLAN AS A SUB-ELEMENT OF THE CITY OF WILSONVILLE COMPREHENSIVE PLAN, REPLACING ALL PRIOR PARKS AND RECREATION MASTER PLANS, AND REPEALING ORDINANCE NO. 625.**

WHEREAS, the City of Wilsonville (City) currently has a 2007 Parks and Recreation Master Plan that was adopted by City Council (Ordinance No. 625) on September 17, 2007; and

WHEREAS, updating the Master Plan is a 2017-19 Council Goal; and

WHEREAS, ORS 197.175 requires the City to prepare, adopt, and implement Comprehensive Plans consistent with statewide planning goals adopted by the Land Conservation and Development Commission; and

WHEREAS, the 2018 Parks and Recreation Comprehensive Master Plan (“Master Plan”) is a sub-element of the City of Wilsonville Comprehensive Plan; and

WHEREAS, an updated Master Plan is needed to account for significant population growth, resulting in the increased need for recreation facilities and programming to serve the additional population and methodology to fund and maintain City park facilities at a high quality; and

WHEREAS, the primary purpose of the Master Plan is to provide a safe and efficient network of recreation facilities, parks, and natural spaces that provides access and opportunities for passive and active experiences and natural areas while providing health benefits to users through physical activity and social interaction; and

WHEREAS, the Master Plan focuses on the provision of a comprehensive and coordinated approach to providing a variety of recreation opportunities and services to City residents of all ages, all incomes, and all cultural backgrounds to encourage recreation participation by as many residents as possible and by citizens of all levels of need, interest, and ability; and

WHEREAS, following the timely mailing and publication of required notice, the Planning Commission conducted a public hearing on May 9, 2018, which was continued to a date certain of August 8, 2018, wherein the Commission received public testimony, staff reports and input, and exhibits, and thereafter deliberated and voted to approve Resolution No. LP18-0003 recommending to the City Council the approval of the proposed Master Plan for the City of Wilsonville; and

WHEREAS, a copy of the record of the aforementioned Planning Commission action and recommendation is marked **Exhibit A**, attached hereto and incorporated by reference herein; and

WHEREAS, following the Planning Commission public hearing, the Planning Director forwarded the recommended Master Plan onto the City Council, along with a staff report and attachments, in accordance with public hearing and notice procedures that are set forth in Sections 4.008, 4.011, 4.012, and 4.198 of the Wilsonville Code (WC); and

WHEREAS, the City Council, after public hearing notices were provided to over 3,000 property owners and/or current residents and 30 interested agencies, emailed to 85 people, and posted in 3 locations throughout the City, as well as on the City website and in the Wilsonville Spokesman, held a public hearing on September 6, 2018 to review the proposed Master Plan, and to gather additional testimony and evidence regarding the proposed Master Plan; and

WHEREAS, the City Council has afforded all interested parties an opportunity to be heard on this subject and has entered all available evidence and testimony into the public record of its proceeding; and

WHEREAS, the City Council has duly considered the subject, including the Planning Commission recommendations and all the exhibits and testimony introduced and offered by all interested parties; and

WHEREAS, it is duly noted that Memorial Park and Boones Ferry Park have their own separate plans and are therefore not included in this Parks and Recreation Comprehensive Master Plan but must be considered in conjunction with it.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. FINDINGS.

The above-recited findings are adopted and incorporated by reference herein as findings and conclusions of Resolution No. LP18-0003, which includes the staff report. The City Council further finds and concludes that the adoption of the proposed 2018 Parks and Recreation Comprehensive Master Plan is necessary to help protect the public health, safety, and welfare of the municipality by planning that will help ensure there will continue to be adequate parks and recreation services and opportunities within the City's parks and recreation system.

2. DETERMINATION.

Based on such findings, the City Council hereby adopts the 2018 Parks and Recreation Comprehensive Master Plan, attached hereto and marked as **Exhibit B**, and incorporated by reference as if fully set forth herein, which shall replace and supersede all prior Parks and Recreation Master Plans adopted by ordinance, resolution, or motion. Ordinance No. 625 is hereby repealed. The City Recorder is hereby directed to prepare final Plan format and address codification and semantic errata.

3. EFFECTIVE DATE OF ORDINANCE.

This Ordinance shall be declared to be in full force and effect thirty (30) days from the date of final passage and approval.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 6<sup>th</sup> day of September, 2018, and scheduled for second reading on the 15<sup>th</sup> day of October 2018, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

\_\_\_\_\_  
Kimberly Veliz, City Recorder

ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following votes:            Yes: \_\_\_\_            No: \_\_\_\_

\_\_\_\_\_  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

Attachments:

Exhibit A - Planning Commission Action and Recommendation

Attachment 1 - Conclusionary Findings

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_a\\_-\\_attachment\\_1\\_-\\_conclusionary\\_findings.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_a_-_attachment_1_-_conclusionary_findings.pdf)

Attachment 2 - Planning Commission Official Record

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_a\\_-\\_attachment\\_1\\_-\\_conclusionary\\_findings.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_a_-_attachment_1_-_conclusionary_findings.pdf)

Exhibit B - 2018 Parks and Recreation Comprehensive Master Plan

[https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city\\_council/meeting/12101/exhibit\\_b\\_-\\_2018\\_parks\\_recreation\\_comprehensive\\_master\\_plan\\_08.21.18.pdf](https://www.wilsonvilleparksandrec.com/sites/default/files/fileattachments/city_council/meeting/12101/exhibit_b_-_2018_parks_recreation_comprehensive_master_plan_08.21.18.pdf)

Dear Judge Winehouse,

FW

Today I write you to update you and check in about how my class went last night over at the Trauma Nurses class. The lady who taught the class was very sweet and spoke in a very caring manner and made it a fun learning experience. I saw a lot of diversity in the auditorium. I sat by another young teenager who had his license suspended and did not show up to his court date and was a total trouble maker. I also sat next to a really smart and mature adult who must have been in his late twenties. I realized that I didn't want to ever be that kid on my left who had a warrant for his arrest and not taking care of responsibilities. I also respected the man on the right of me because he got a seat belt ticket and took time out of his day to be there just to prevent any dangerous driving behaviors. He told me he got a distracted driving ticket when he was young and said he learned really fast how much can change when you don't have your privilege to drive. He reminded me of exactly what you said to me on the 17th; this is the last warning I'll get. Without a license, a lot of the good in your life can change. Working becomes challenging, maintaining a social life is hard without transportation especially with one single parent. I have realized what a gift driving has become and how underappreciated I was of driving. My letter came in from the DMV yesterday that stated my license would be suspended for 6 months. Everyone expected me to be sad or angry about my well deserved punishment and all I could say was that I was excited to be given another chance in my life to prove to the state and a judge who believes in me that I will learn my lesson from being a careless driver and transform my mistakes into life lessons. As of now, anytime I witness my friends on their phone driving, I safely snatch it away from them because I love my friends and I've made it clear to them how much just sending one text or changing the song can change someone's lives. In my class, an average text takes 4.6 seconds of your time where your eyes are not fully on the road and your cognitive brain is not functioning like it is supposed to be functioning. I do not encourage any of my friends to speed or make any risky driving moves as I have a clear understanding now that a car is not a toy, it is a means of travel and a very important one. One of the most intriguing topics I took away from the class was the fact that you can ruin someone's entire life with one simple mistake let alone hurt yourself by not paying attention.

Thank you for your time Judge Winehouse,



OK - GOOD LETTER  
 TELL DMV - REINSTATE OK w/ US.  
 HE SAYS HE GOT 6 MO DMV  
 SUSPENSION WHICH IS OK.  
 FIND OUT FROM DMV WHAT  
 WE SHOULD DO w/ HIS LICENSE  
 J. Winehouse  
 8/21/10