

## 1 – GOVERNMENT AND ADMINISTRATION

Compilation Number	Ordinance Number	Subject
1-1	[Repealed]	
1-2	[Repealed]	
1-3	[Repealed]	
<b>1-4</b>	<b>1000</b>	<b>Civil Defense</b>
1-5	[Repealed]	
1-6	[Repealed]	
1-7	[Repealed]	
1-8	[Repealed]	
1-9	[Repealed]	
1-10	[Repealed]	
1-11	[Repealed]	
1-12	[Repealed]	
1-13	[Repealed]	
1-14	[Repealed]	
<b>1-15</b>	<b>1582 as amended by 1609</b>	<b>Evidentiary Rules of Procedure</b>
1-16	[Repealed]	
1-17	[Repealed]	
1-18	[Repealed]	
1-19	[Repealed]	
1-20	[Repealed]	
<b>1-21</b>	<b>1816</b>	<b>Cable Television Advisory Board</b>
1-22	[Repealed]	
<b>1-23</b>	<b>1840</b>	<b>Abandoned Personal Property</b>
1-24	[Repealed]	
<b>1-25</b>	<b>1867</b>	<b>Nomination Procedures</b>
1-26	[Repealed]	
<b>1-27</b>	<b>1998 as amended by 2007, 2117, 2301 and 2362</b>	<b>Civil Infraction Procedure</b>
1-28	[Repealed by 2308]	
1-29	[Repealed by 2304]	
1-30	[Repealed by 2413]	

<b>Compilation Number</b>	<b>Ordinance Number</b>	<b>Subject</b>
<b>1-31</b>	<b>2182</b>	<b>City Council Bylaws</b>
1-32	[Repealed]	
1-33	[Repealed by 2272]	
<b>1-34</b>	<b>2225</b>	<b>Jurisdiction &amp; Authority Over Public Rights-Of-Way</b>
<b>1-35</b>	<b>2254</b>	<b>Creating Museum Committee</b>
<b>1-36</b>	<b>2265</b>	<b>Creating a Library Board</b>
<b>1-37</b>	<b>2270</b>	<b>Creating a Recreation and Park Board</b>
1-38	[Repealed by 2300]	
1-39	[Repealed]	
<b>1-40</b>	<b>2304</b>	<b>Ward Boundaries</b>
<b>1-41</b>	<b>2308</b>	<b>Personnel Rules</b>
<b>1-42</b>	<b>2284</b>	<b>Management of Public Rights of Way Relating to Telecommunications</b>
<b>1-43</b>	<b>2315</b>	<b>Emergency Management Ordinance</b>
1-44	Repealed	
1-45	Repealed	
<b>1-46</b>	<b>2378</b>	<b>Measure 37 Claims Process</b>
<b>1-47</b>	<b>2381</b>	<b>Public Contracting Rules</b>
<b>1-48</b>	<b>2428</b>	<b>Municipal Judges Pro-Tem</b>
<b>1-49</b>	<b>2433</b>	<b>Master Fee Schedule</b>

**ORDINANCE NO. 1000**

**AN ORDINANCE RELATING TO CIVIL DEFENSE FOR THE CITY OF WOODBURN.**

[Whereas clauses.]

**THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:**

**Section 1.** A local organization for civil defense in the City of Woodburn is hereby established to be known as "Woodburn Civil Defense," to perform such civil defense functions within and without the limits of the City of Woodburn as provided by the Marion County Civil Defense Manual and Disaster Action Plan, as approved by the Marion County Court.

**Section 2.** Woodburn Civil Defense shall have a director who shall be appointed by the Mayor to serve at his pleasure. The director shall have the duties and powers provided in the Oregon Civil Defense Act of 1949, as amended.

**Section 3.** All agreements made, acts performed, and things done by the Mayor, the City Council, officers of the city, the civil defense director, and members of his organization pertaining to civil defense prior to passage of this ordinance hereby are ratified and approved, such agreements, acts, and things performed having been done under the belief that the non-recorded prior action of the city council was in full accordance with the Oregon State Civil Defense Act of 1949, as amended, and subsequent order and regulations promulgated on authority of that act.

***Passed by the Council and approved by the Mayor May 21, 1957.***

**ORDINANCE NO. 1582****AN ORDINANCE PRESCRIBING PROCEDURES FOR EVIDENTIARY HEARINGS; AND DECLARING AN EMERGENCY.****THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:**

**Section 1.** In all evidentiary hearings before the common council and planning commission, the following procedures for the conduct of the hearings are prescribed:

(1) All interested persons in attendance shall be heard on the matter for hearing, and this fact shall be communicated to those in attendance.

(2) A summary of the application or other matter for hearing shall be given by the presiding officer or someone appointed by him or her.

(3) The staff report, if any, shall be made.

(4) Questions, if any, by the hearing body of the staff.

(5) Testimony shall be received in the following order:

- (a) Applicant.
- (b) Proponents.
- (c) Opponents.
- (d) Rebuttal by proponents.
- (e) Others.

(6) Close public hearing. However, the common council or planning commission may continue the hearing and the taking of evidence to another meeting, the time, date and place of which shall be announced before adjournment.

(7) Question, if any, by the hearing body.

(8) Discussion by the hearing body.

(9) A decision shall be made by the hearing body; except, however, that further discussion and/or decision by the hearing body may be postponed to another meeting, the time, date and place of which shall be announced before adjournment.

(10) All persons who speak at such a hearing shall identify themselves by name, address and interest in the matter. Attorneys or others shall be allowed to speak on behalf of proponents or opponents.

(11) Written briefs by any interested party, their attorney or other agent will be accepted if filed with the secretary or clerk of the hearing body.

**1-15.1**

**1-15.2**

(12) The record made at any prior hearing shall be accepted, considered and used by the hearing body, but such record need not set forth evidence verbatim. [Subsection 12 as amended by Ordinance No. 1609, passed June 5, 1978.]

**Section 2.** [Emergency clause.]

***Passed by the Council November 8, 1977, and approved by the Mayor November 10, 1977.***

**ORDINANCE NO. 1816****AN ORDINANCE CREATING A CABLE TELEVISION ADVISORY BOARD, DEFINING ITS DUTIES AND RESPONSIBILITIES.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The Woodburn Cable Television Advisory Board is hereby created to advise and make recommendations to the City Administrator and when appropriate, the Mayor and City Council, on matters pertaining to the operation of the Cable Television System in the City of Woodburn.

**Section 2. Board Membership.** The Board shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and from resident voters of the City. Members shall serve without pay. Terms of office shall be three years from the date of appointment. Appointments shall be made annually upon the expiration or other determination of the members term of office. Terms of office shall begin the first year, with three members who will serve for the period of one year, two who shall serve for the period of two years and two who shall serve for the period of three years from the date of their appointment. Each member of the Board serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause of hearing. Members may be removed by the Mayor, with the consent of the City Council. In addition to the appointed members, the Mayor and the City Administrator or his designee will serve as ex-officio members.

**Section 3. Meetings.** The Board shall meet at such times as the Board may determine are appropriate and necessary. All Board meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

**Section 4. Officers.** The Cable Television Advisory Board shall, at its first annual meeting, elect a chairman, secretary and such other officers as the Board may deem appropriate. Officers shall have such duties and authority as the Board shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

**Section 5. Board Responsibilities.** The Cable Television Advisory Board shall work directly with the Cable Franchise holder and have the responsibility for advising and making recommendations to the City Administrator or the designated staff liaison, and when appropriate, to the Mayor and Council, on matters pertaining to the use of community access channels; to foster awareness of the community access channels; to act as intermediary for the community with respect to all issues, concerns and needs of the community regarding cable television; and to perform as a respondent to all grievances brought before the committee.

---

**1-21.6****1-21.8**

**Section 6. Rules and Regulations.** The Cable Television Advisory Board shall advise and recommend to the Cable Franchise holder, and when appropriate the City Administrator and the Mayor and Council, reasonable rules and regulations governing the use and control of community access cable television channels in the City of Woodburn.

**Section 7. Internal Administration Policies and Procedures.** The Cable Television Advisory Board shall operate in conformance with all City administrative procedures.

**Section 8. Annual Reports.** The Cable Television Advisory Board shall make a full and complete report to the City Council and make such other reports as may be required by the Mayor and Council.

***Passed by the Council May 9, 1983, and approved by the Mayor May 10, 1983.***

**ORDINANCE NO. 1840****AN ORDINANCE PROVIDING FOR THE SALE OF ABANDONED, SEIZED, OR SURPLUS PERSONAL PROPERTY, REPEALING ORDINANCE NO. 988 AND DECLARING AN EMERGENCY.****The City of Woodburn ordains as follows:**

**Section 1. Custody of Property.** Whenever any personal property, other than abandoned vehicles, is taken into custody by the Police Department by reason of seizure, abandonment, or for any other reason, the same shall be held at the expense of the owner or person lawfully entitled to possession thereof.

**Section 2. Redemption.** At any time within 60 days after such property is taken into possession by the Police Department, except property that is confiscated and being held as evidence, the owner or person lawfully entitled to possession of the property may reclaim the same on application to the police chief and satisfactory proof of ownership or right to possession, and upon payment of charges and expenses, if any, incurred in the keeping of the property.

**Section 3. Surplus City Property.** The procedure contained in this ordinance may also be used to dispose of surplus property as designated by the City Administrator.

**Section 4. Sale of Property.** Whenever the City Administrator or his designee deems it necessary, all such property shall be sold to the highest bidder at public auction. The City Administrator or his designee may decline the highest bid and reoffer the property for sale if he considers the price of the bid to be insufficient. The City Administrator or his designee need not offer the property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

**Section 5. Notice of Sale.** Any sale held under this ordinance shall be preceded by a single publication of notice thereof at least three weeks in advance of such sale in a newspaper of general circulation in the City of Woodburn.

**Section 6. Title; Liability of City.** The purchaser at any sale conducted under this ordinance shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. However, the City of Woodburn assumes no responsibility as to condition of title of the above-described property. In case the sale shall for any reason be held invalid, the liability of the City is limited to return of the purchase price.

**Section 7. Proceeds of Sale** All funds received under this ordinance shall forthwith be deposited by the City Administrator or his designee in the general fund of the City of Woodburn. Before making any deposit to the general fund, the City Administrator or his designee may deduct:

---

**1-23.7****1-23.10**

- (a) Any costs in connection with the sale of the property;
- (b) Any costs of mailing a publication in connection with the property;
- (c) Reasonable service charges.

**Section 8. Payment to Owner.** At any time within one year after such sale, the owner of any property sold as herein provided shall be entitled to have the balance of the proceeds of such sale paid to him out of the general fund upon making application therefor to the City Council and presenting satisfactory proof of ownership.

**Section 9. Repeal.** Ordinance No. 988 is hereby specifically repealed.

**Section 10.** [Emergency clause.]

***Passed by the Council September 12, 1983, and approved by the Mayor  
September 13, 1983.***

## ORDINANCE NO. 1867

**AN ORDINANCE ESTABLISHING NOMINATION PROCEDURES FOR THE OFFICES OF MAYOR AND CITY COUNCILOR AND DECLARING AN EMERGENCY.**

[Whereas clauses.]

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Eligibility.** Any person who is eligible pursuant to Section 12 of the Woodburn City Charter may be nominated for an elective City position.

**Section 2. Nomination Procedure.** Nomination shall be by petition specifying the position sought and signed by the requisite number of electors as that term is defined by Section 2 of the Oregon Constitution. Such petition shall be signed by not fewer than twenty (20) electors. No elector shall sign more than one such petition for the same office. If an elector signs more than one petition for the same office the signature of the elector shall be valid only on the first petition filed. The signatures of a nomination petition need not all be appended to one paper. However, an affidavit of the circulator of the petition shall be attached to each separate paper of the petition indicating the number of signers of the paper and stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. The signer's place of residence, identified by its street and number or other sufficient description shall accompany each signature.

**Section 3. Filing.** All nomination papers shall be assembled and filed with the City Recorder as one instrument not earlier than 250 nor later than 70 days before the election.

**Section 4. Duty of the City Recorder.** The City Recorder shall make a record of the exact time at which each petition is filed and shall take and preserve the name and address of the person who filed the petition. Each petition shall be accompanied by the acceptance of the nominee which shall be endorsed upon the petition and signed by the nominee. If the petition is not signed by the required number of qualified electors, or does not contain the endorsed acceptance of the nominee, the Recorder shall notify the nominee and the person who filed the petition within five (5) days after the filing. If the petition is insufficient in any other particular, the Recorder shall return it immediately to the person who filed it, certifying in writing wherein the petition was insufficient. Such deficient petition may be amended and filed again as a new petition, or a different petition for the same candidate may be filed within the regular time for filing nomination petitions. Upon determination that the petition is in all respects sufficient, the Recorder shall cause the nominee's name to be printed on the ballots. The nomination petition for a successful candidate at an election shall [be] preserved in the office of the Recorder until the term of office for which the candidate is elected expires.

1-25.5

1-25.5

**Section 5.** [Emergency clause.]

*Passed by the Council April 23, 1984, and approved by the Mayor April 24, 1984.*

## ORDINANCE NO. 1998

**AN ORDINANCE ESTABLISHING A STREAMLINED CIVIL INFRACTION PROCEDURE TO ENFORCE CITY ORDINANCE VIOLATIONS; PROVIDING A SCHEDULE OF FORFEITURES FOR THE VIOLATION OF SAID ORDINANCES; REPEALING ORDINANCE 1610; AND DECLARING AN EMERGENCY.**

[Where as clauses.]

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Definitions.** For the purpose of this ordinance the following mean:

(A) Civil Infraction - Commission of an act or omission to act in a manner prescribed by this ordinance or other city ordinance constituting breach or infringement of a section of a city ordinance or of this ordinance constitutes a civil infraction and shall be handled in accordance with the procedures established by this ordinance. Civil infraction does not include violations of other city ordinances where a criminal penalty is provided. When an infraction is of a continuing nature, except where specifically provided otherwise, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist, and a separate citation may be filed for each such infraction.

(B) Enforcement Officer - The City Administrator or any designee appointed by the Administrator to enforce this ordinance.

(C) Forfeiture; Forfeiture Schedule - The only penalty to be imposed for an infraction is a monetary penalty called a forfeiture. The forfeiture to be assessed for a specific infraction will be determined pursuant to specific provisions within the ordinance defining the infraction, or the forfeiture schedule found in Section 5 of this ordinance. The procedure prescribed by this ordinance shall be exclusive procedure for imposing a forfeiture; however, this section shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statute or state law which are intended to abate or alleviate ordinance violations, nor shall the city be prohibited from recovering, in a manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any ordinance.

(D) Person - Any natural person or persons, firm, partnership, association or corporation.

(E) Responsible Party - The person responsible for curing or remedying an infraction and includes:

(1) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;

(2) The person occupying the property including bailee, leasee, tenant or other person having possession;

---

**1-27.1****1-27.2**

(3) The person who is alleged to have committed or authorized the commission of the infraction.

**Section 2. Infraction Procedure.**

(A) Issuance of uniform citation and complaint;

(1) When a violation of a city ordinance occurs a uniform infraction citation and complaint signed by the enforcement officer may be filed with the municipal court charging the responsible party with the civil infraction and setting a date for the responsible party to appear before the municipal court to answer said complaint.

(2) The enforcement officer shall prescribe the form of the uniform infraction citation and complaint, but it shall consist of at least three pages. Additional pages may be inserted for administrative purposes by those charged with the enforcement of the ordinances. The required pages are:

- (a) the complaint;
- (b) the city department record; and
- (c) the summons.

(3) Each of the three pages shall contain the following information:

- (a) the name of the court and the court's file number;
- (b) the name of the person cited;
- (c) the infraction with which the person is charged;
- (d) the date, time and place the infraction occurred, or if the infraction is of a continuing nature, the date, time and place the infraction was observed by the enforcement officer, or the citizen signing the complaint;
- (e) the date on which the citation was issued;
- (f) the scheduled forfeiture for the alleged infraction;
- (g) the time and place at which the person cited is to appear in court to answer the complaint.

(4) The complaint shall contain a form of certification that the person signing the complaint states that the person has reasonable ground to believe, and does believe that the person cited committed the infraction.

(5) The summons shall also contain notice to the person cited that a civil complaint will be filed in the municipal court of the city.

(B) Summons. Service of the uniform citation and complaint shall be made by personal service upon the responsible party. If personal service cannot be made then service of the uniform infraction citation and complaint shall be in accordance with the Oregon Rules of Civil Procedure.

**1-27.2****1-27.2**(C) Answer

(1) A person who receives a summons and complaint alleging an infraction shall answer such complaint by personally appearing to answer at the time and place specified therein; except an answer may be made by mail or personal delivery if received by the city within ten days of the date of the receipt of the summons as provided in subsection 2 and 3 below.

(2) If the person alleged to have committed an infraction admits the infraction, the person may complete the appropriate answer on the back of each summons and forward the summons to the municipal court. Cash, check or money order in the amount of the forfeiture for the infraction alleged as shown on the back of the summons shall be submitted with the answer. Upon receipt of the forfeiture, an appropriate order shall be entered in the municipal court records.

(3) If the person alleged to have committed the infraction denies part or all of the infraction, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for court fees. Upon receipt, the answer shall be entered and a hearing date established by the municipal court. The municipal court shall notify the person alleged to have committed the infraction by return mail of the date of the hearing. The security deposit may be waived in whole or in part at the discretion of the municipal court for good cause shown and upon written application of the person alleged to have committed the infraction setting forth the reason for requesting the waiver and certifying that the person alleged to have committed the infraction will attend the hearing when scheduled.

(D) Hearing.

(1) Every hearing to determine whether an infraction has been committed shall be held before the municipal court without a jury.

(2) The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense.

(3) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(4) If the defendant alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, the defendant must so request in writing from the court.

(5) The complainant shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

**1-27.2****1-27.4**

(6) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the infraction as alleged in the complaint was committed. When the infraction has not been proven, an order dismissing the complaint shall be entered in the municipal court records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the court finds that the infraction was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the infraction alleged.

(7) Upon a finding that an infraction has occurred, the court shall assess a forfeiture pursuant to the schedule established in accordance with this ordinance, plus court costs and witness fees. The municipal court judge is authorized to set reasonable court costs including security for court fees by court order.

(8) Any written documents, correspondence or physical evidence associated with the matter shall be retained by the municipal court until disposed of by order of the municipal court

(9) The determination of the municipal court shall be final. Review of the court's determination shall be to the circuit court by writ of review pursuant to ORS Chapter 34.

### **Section 3. Enforcement.**

(A) If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgment shall be entered for the schedule forfeiture applicable to the charged infraction. In addition, when a person fails to appear for a hearing, the security posted, or an amount equal to the security waived, shall be ordered forfeited. Nothing in this subsection shall be construed to limit in any way the contempt powers of the municipal judge granted by the charter of state law, and the judge may exercise those powers as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this ordinance.

(B) Any forfeiture assessed is to be paid no later than ten days after the receipt of the final order declaring that forfeiture. Such period may be extended upon order of the municipal judge.

(C) Delinquent forfeitures and those brought to default judgment which were assessed for infractions may in addition to any other method be collected or enforced pursuant to ORS 30.310 or 30.315.

### **Section 4. Lien Filing and Docketing.**

(A) When a judgment is given in municipal court in favor of the city for the sum of \$10.00 or more, exclusive costs or disbursements, the enforcement officer may, at any time thereafter while the judgment is enforceable, file with the City Recorder a

1-27.4

1-27.5

certified transcript of all those entries made in the docket of the municipal court with respect to the action in which the judgment was entered.

(B) Thereupon, the City Recorder shall enter the judgment of the municipal court on the city lien docket.

(C) From the time of the entry of the municipal court judgment in the city lien docket, the judgement shall be a lien upon the real property of the person against whom judgment was entered in the municipal court. Except as provided in subsection D, entry of the municipal court judgment in the city lien docket shall not thereby extend the lien of the judgment more than ten years from the original entry of the judgment in the municipal court.

(D) Whenever a judgment of the municipal court which has been entered pursuant to this section is renewed by the municipal court the lien established by subsection C of this section is automatically extended ten years from the date of the renewal order.

(E) The City Recorder may file the transcript of the judgment with the county clerk for entry in the judgment docket of the circuit court.

**Section 5. Schedule of Forfeitures.**

**Schedule of Forfeitures.**

(A) Infractions as classified for the purpose of determining forfeitures in the following categories:

- (1) Class 1 civil infractions.
- (2) Class 2 civil infractions.
- (3) Class 3 civil infractions.
- (4) Class 4 civil infractions.
- (5) Class 5 civil infractions.

(B) As assessment of a forfeiture for an infraction shall be an assessment to pay an amount not exceeding:

- (1) \$750.00 for a class 1 civil infraction.
- (2) \$500.00 for a class 2 civil infraction.
- (3) \$250.00 for a class 3 civil infraction.
- (4) \$125.00 for a class 4 civil infraction.
- (5) \$100.00 for a class 5 civil infraction.

(C) Infraction of specific Woodburn ordinances are classified as follows:

<u>Ordinance No.</u> .....	<u>Class</u>
583.....	4
1015.....	4
1084.....	1
1187.....	4
1358.....	2
1638 Section 21/Vicious Dogs .....	2
Remainder of Ordinance .....	5
1641 .....	2
1790.....	1
1795.....	1
1866.....	2
1908.....	3
1917.....	1
1925.....	2
1957.....	5
1965.....	3
1988.....	5
1999.....	1
2399.....	2
2057.....	2
2060.....	1, 4
2084.....	4
2122.....	2
2173.....	1
2225.....	2
2262.....	5
2285.....	4
2293.....	1
2312.....	1
2313.....	1
2336.....	1

(D) Where an ordinance of the City of Woodburn provides that an ordinance violation may be processed in accordance with the Civil Infraction Ordinance, but does not classify the civil infraction, this unclassified civil infraction shall constitute a Class I civil infraction under this ordinance.

Ordinances enacted after the effective date of this ordinance which require a forfeiture provision for their enforcement shall incorporate the infraction procedure set out herein and classify violations thereof in accordance with Section 5 of Ordinance 1998.

1-27.5

1-27.9

[Section 5 as amended by Ordinance No. 2362, passed May 24, 2004.]

**Section 6. Severability.** The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 7. Non-Exclusive Remedy.** The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes intended to alleviate ordinance violations.

**Section 8. Repeal and Saving Clause.**

(A) Ordinance 1610, as amended, is hereby repealed.

(B) After the effective date of this ordinance, any reference to Ordinance 1610 contained in the ordinances or resolutions of the City of Woodburn shall be construed by any court to be a reference to the provisions of this ordinance.

(C) Notwithstanding subsection A of this section, Ordinance 1610 shall remain valid and in force for the purpose of allowing the prosecution and punishment of a person who violated Ordinance 1610 prior to the effective date of this ordinance.

**Section 9.** [Emergency clause.]

***Passed by the Council May 23, 1988, and approved by the Mayor May 23, 1988.***

**ORDINANCE NO. 2182**

**AN ORDINANCE ADOPTING BYLAWS GOVERNING PROCEEDINGS OF THE CITY COUNCIL, REPEALING ORDINANCE NO. 1971, AND DECLARING AN EMERGENCY.**

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to prescribe rules to govern all meetings and proceedings of the Council, consistent with all provisions contained in the Woodburn City Charter and Oregon state law. The intent of this ordinance is to supplement the Woodburn City Charter to allow implementation of any substantive charter requirements. In this respect, provisions of the Woodburn City Charter and Oregon state law override and supersede any conflicting provisions of this ordinance. If any section or subsection of this ordinance is determined by a court to be invalid or unenforceable, then such section or subsection shall be severed from this ordinance and the remainder of this ordinance shall remain in full force and effect.

**Section 2. Ordinances and Resolutions.**

A. Proposed Ordinances and Resolutions (Council Bills) may be introduced by any member of the Council.

B. An Ordinance shall receive two readings prior to final passage.

C. Readings of an Ordinance may be by title only unless a Councilor requests that the Ordinance be read in full.

D. A Resolution shall receive one reading prior to final passage and this reading shall be by title only unless a Councilor requests a full reading.

E. Procedure.

(1) A Councilor presents a proposed Ordinance or Resolution (Council Bill). (No motion is necessary since no vote is required for introduction of a bill, e.g. "Mr./Madam Mayor, I introduce Council Bill \_\_\_\_\_.")

(2) The Mayor asks that the Council Bill be read in full/or by title only if there is no objection from the Council.

(3) The Council Bill is read as requested.

(4) If the Council Bill is a proposed Resolution, the Mayor asks if there is any discussion. After discussion and motions, if any, the Mayor shall call for a vote on the Resolution. Upon the request of any Councilor, the ayes and nays shall be taken and entered in the record.

**1-31.2**

**1-31.4**

(5) If the Council Bill is a proposed Ordinance, the Mayor asks that the Council Bill be read a second time by title only if there are no objections from a Councilor.

(6) The Council Bill (proposed Ordinance) is read as requested.

(7) The Mayor then asks if there is any discussion on the Council Bill (proposed Ordinance). After discussion and motions, if any, the Mayor shall call for a vote and the ayes and nays shall be taken and entered in the record.

F. A Resolution shall be declared passed by affirmative vote of a majority of the Councilors present at the meeting.

G. An Ordinance may be enacted in a single meeting by unanimous consent of the Councilors present. If not approved by unanimous consent of the Councilors present, the Ordinance shall be read and voted upon on a different day at another meeting, and enacted if a majority of the Councilors present at that meeting vote affirmatively.

H. All Resolutions and Ordinances passed or enacted by the Council are subject to veto of the Mayor as provided in Chapter V, Section 20, of the Woodburn City Charter.

I. Except in extreme emergencies, copies of Council Bills shall be provided the Mayor and members of the Council at least 48 hours prior to any session at which they could be introduced.

**Section 3. Meetings.**

A. A majority of the incumbent members of the Council constitutes a quorum.

B. The Council shall hold a regular meeting at least once each month in the city at a time and place it designates.

C. The Council may hold a special meeting at the call of the Mayor or at the request of three Councilors in accordance with Chapter IV, Section 13 of the Woodburn City Charter.

**Section 4. City Officers.**

A. Mayor

(1) The Mayor shall preside over all Council meetings at which he/she is present in accordance with the Woodburn City Charter.

(2) Consistent with the Woodburn City Charter all appointments by the mayor are subject to Council confirmation.

1-31.4

1-31.6

(3) The Mayor shall make a good faith effort to confer with the Council about who he/she will appoint to a committee so that any comments, objections, etc. Of individual councilors may be considered by the Mayor prior to the appointment. Both the Mayor and Council shall make every possible effort to avoid embarrassment to appointees.

(4) In the event that the Council does not confirm any appointment made by the Mayor and submitted to the Council for consideration, the Mayor shall within 10 days make a new appointment and submit it to the Council.

B. The Council President shall be elected by the Council and shall serve in accordance with the Woodburn City Charter.

**Section 5. Agenda.**

A. Matters to be considered by the Council shall be placed on an agenda to be prepared by the Mayor and the City Administrator. Any Councilor desiring to have a matter considered by the Council shall advise the Mayor or City Administrator to place it on the agenda.

B. In addition to the written agenda, any Councilor may bring items to the attention of the Council during a meeting, in accordance with the provisions of this ordinance, the Woodburn City Charter and state law.

C. At the discretion of the presiding officer and in accordance with state law, any visitor may speak on any matter of city business. The presiding officer may establish time limits on such comments by visitors to insure that all persons desiring to be heard shall have the opportunity to speak.

**Section 6. Public Hearings.**

A. Consistent with the provisions of state law, the following procedure shall be used at all public hearings:

(1) Public hearing opened

(2) Declarations:

(a) The presiding officer will ask if any member of the Council has a conflict of interest in the matter.

(b) The presiding officer will ask if any member of the Council has had any EX-PARTE contact he wishes to disclose.

(c) The presiding officer will ask if anyone from the audience wishes to challenge any member of the council from acting on the matter.

(3) Staff report

1-31.6

1-31.8

- (4) Testimony by applicant
- (5) Testimony by proponents
- (6) Testimony by opponents
- (7) Rebuttal by applicant
- (8) Hearing is closed
- (9) COUNCIL Discussion

(10) Final decision (or motion to direct staff to draft ordinance for CONSIDERATION at next Council meeting if land use decision is involved)

B. Any questions by the Mayor and Council addressed to individuals giving public testimony must be asked to these individuals prior to the close of the public hearing.

**Section 7. Roberts Rules of Order.**

A. Roberts Rules of Order, Newly Revised, shall be used as the guideline for conduct of Council meetings, except in those cases where specific provisions contrary to Robert Rules are provided herein.

B. The Chair will not condone any inappropriate conduct in a meeting. Meetings will be conducted in an orderly and dignified manner.

C. If in the chair's judgment any person is not in accordance with these rules, that person will be asked to leave.

**Section 8. Miscellaneous Rules of Procedure.**

A. In all matters to be heard by the Council, the City Administrator or member of his staff shall be given the first opportunity to speak thereon. Proponents of the matter before the Council shall be afforded the next opportunity to speak thereon. Opponents of the matter before the Council shall be afforded the opportunity to speak thereon after proponents have completed their presentations. Councilors have the privilege of asking questions at any time. After all presentations are complete, the Council may discuss the matter and take action as desired.

B. Official "public hearings" shall be conducted as prescribed by law and/or current regulations governing said hearings. All persons attending official "public hearings" will be given reasonable time to present their arguments, but such persons are requested to avoid repetitious and irrelevant statements.

---

**1-31.8****1-31.10**

C. Visitors desiring to speak will formally address the chair, and visitors will identify themselves by their name, address, and whether they represent a person, group or organization.

D. If at all possible, all regular and special Council meetings shall be tape recorded. Council members, staff and visitors shall use the microphones provided for that purpose. The visitors microphone shall not be removed from its stand without permission of the presiding officer.

**Section 9. Suspension of the Rules.** In accordance with the Woodburn City Charter, the rules contained in this Ordinance may be suspended by the concurrence of a majority of the Council present at a Council meeting.

**Section 10. Repeal of Ordinance 1971.** Ordinance 1971 is hereby repealed

***Passed by the Council October 28, 1996, approved by the Mayor  
October 29, 1996.***

## ORDINANCE NO. 2225

**AN ORDINANCE ASSERTING JURISDICTION AND EXERCISING AUTHORITY OVER PUBLIC RIGHTS-OF-WAY; REQUIRING PERMISSION TO USE SAID RIGHTS-OF-WAY; REGULATING THE USE OF SAID RIGHTS-OF-WAY; REPEALING ORDINANCE NO. 2185 AND DECLARING AN EMERGENCY.**

[Whereas clauses.]

**Section 1. Definitions.** For the purpose of this ordinance, the following mean:

City: The City of Woodburn, Oregon.

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

Public rights-of-way: Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

Within the city: Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

**Section 2. Jurisdiction.** The city of Woodburn has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city charter and state law.

**Section 3. Scope of Regulatory Control.** The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

**Section 4. City Permission Requirement.** No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and permits.

**Section 5. Obstructions Prohibited.** No person shall obstruct, cause to be obstructed, assist in obstructing or interfere with a public right-of-way by depositing or storing personal property or other material on the right-of-way or by any other manner obstructing or interfering with the right-of-way without first obtaining city permission. This section shall not apply to the delivery of merchandise, equipment, or services provided the delivery is accomplished with a reasonable time.

**Section 6. Deposit of Materials Prohibited.** No person shall deposit garbage, earth, debris, or rubbish of any kind on a public right-of-way without first obtaining city permission.

---

**1-34.7****1-34.12**

**Section 7. Obligations of the City.** The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

**Section 8. Penalty.** Violation of this ordinance constitutes a class 2 civil infraction and may be dealt with according to the procedures established by Ordinance 1998.

**Section 9. Non-Exclusive Remedy.** The penalty described in this ordinance shall not be the exclusive remedy of the city for the violation of the ordinance. The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes intended to alleviate ordinance violations.

**Section 10. Repeal.** Ordinance No. 2185 is hereby repealed.

**Section 11. Severability.** Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or part of sections.

**Section 12.** [Emergency clause.]

***Passed by the Council and approved by the Mayor August 10, 1998.***

## ORDINANCE NO. 2254

**AN ORDINANCE CREATING A MUSEUM COMMITTEE AND DEFINING ITS DUTIES AND RESPONSIBILITIES AND DECLARING AN EMERGENCY.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The Woodburn Museum Committee is hereby created to advise and make recommendations to the City Administrator and Mayor and City Council, on matters related to the management of the museum.

**Section 2. Membership.** The Committee shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and shall be responsible to the Mayor and City Council. Six (6) members shall be appointed from resident voters of the greater Woodburn area. The seventh member shall be appointed from the student body of Woodburn High School and need not be a resident voter. Members shall possess a background and interest in historic collections, historic preservation and local and/or natural history. Members shall serve without pay. Terms of office, excepting that of the member appointed from the student body of Woodburn High School, shall be four (4) years from the date of appointment and staggered so three positions will expire every two years. The term of office for the member appointed from the Woodburn High School shall be two (2) years from the date of appointment, which shall be in August. All other appointments shall be made annually, in December, upon the expiration or other determination of the members' term of office. Each member of the Committee serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause or hearing. Members may be removed by the Mayor, with the consent of the City Council. In addition to the appointed members, the Mayor and City Administrator will serve as ex-officio members.

**Section 3. Meetings.** The Committee shall meet quarterly, or at such times as the Committee may deem necessary and appropriate. All Committee meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

**Section 4. Officers.** The Museum Committee shall, at its first meeting, elect a chairman and such other officers as the Committee may deem appropriate. Officers shall have such duties and authority as the Committee shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

**Section 5. Committee Responsibilities.** The Museum Committee shall be responsible for advising and making recommendations to the City Administrator, and when appropriate, to the Mayor and Council, on all matters pertaining to the planning, acquisition, development and management of the Museum.

**Section 6. Budget.** The Museum Committee shall participate in the preparation of the annual budget and shall recommend to the Budget Officer a budget for the expenditure of all funds produced by tax or other means for the development, promotion and management of the Museum in the City of Woodburn.

**1-35.7****1-35.12**

**Section 7. Rules and Regulations.** The Museum Committee shall advise the City Administrator regarding preparation and adoption of reasonable rules and regulations governing the use of and proper conduct in the Museum in the City of Woodburn.

**Section 8. Supervision of Curator.** The City Administrator shall have the responsibility for the hiring, termination, discipline and any other personnel actions affecting the Museum Curator, or other paid museum personnel.

**Section 9. Internal Administrative Policies and Procedures.** The City Administrator shall be the fiscal and internal administrative agent for the Museum. The museum shall operate in conformance with City administrative procedures including those pertaining to the following:

- (1) Personnel, including recruitment, selection, classification and pay for department staff;
- (2) Personnel matters, including discipline and grievances;
- (3) Receipt, disbursement and accounting for monies;
- (4) Maintenance of general books, cost accounting records, and other financial documents;
- (5) Purchasing;
- (6) Budget administration; and
- (7) Operation and maintenance of equipment and buildings.

**Section 10. Assistance to the Committee.** The Curator, shall assist the Committee in the performance of its duties, and shall prepare reports as requested by the Committee.

**Section 11. Annual Reports.** The Museum Committee shall make a full and complete annual report to the City Council and make such other reports as may be required by the Mayor and Council. The Curator shall be responsible for the preparing the report with Committee input.

**Section 12. [Emergency clause.]**

***Passed by the Council and approved by the Mayor January 11, 2000.***

## ORDINANCE NO. 2265

**AN ORDINANCE CREATING A LIBRARY BOARD, DEFINING ITS DUTIES AND RESPONSIBILITIES, AND REPEALING ORDINANCE NO. 1797 AND DECLARING AN EMERGENCY.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The Woodburn Public Library Board is hereby created to advise and make recommendations to the Community Services Director and the Mayor and City Council, on all matters related to the management of the library and rules and regulations governing the use of the library.

[Section 1 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 2. Board Membership.** The Board shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and shall be responsible to the Mayor and City Council. Six (6) members shall be appointed from resident voters of the City or of the urban growth boundary. The seventh member shall be appointed from the student body of Woodburn High School and need not be a resident voter. Members shall possess a background and interest in library science and programs, library management and operations, or literacy. Members shall serve without pay. Terms of office, excepting that of the member appointed from the student body from Woodburn High School, shall be four (4) years from the date of appointment and staggered so three positions will expire every two years. The term of office for the member appointed from Woodburn High School shall be one (1) year from the date of appointment, which shall be in August. All other appointments shall be made annually, in December, or upon the expiration or other termination of the member's term of office. Each member of the Committee serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause or hearing. Members may be removed by the Mayor pursuant to City resolution. In addition to the appointed members, the Mayor or the Mayor's representative and the Director will serve as ex-officio members.

[Section 2 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 3. Meetings.** The Board shall meet at such times as the Board may determine are appropriate and necessary. All Board meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

**Section 4. Officers.** The Library Board shall, at its first meeting, elect a chairman and such other officers as the Board may deem appropriate. Officers shall have such duties and authority as the Board shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

1-36.5

1-36.10

**Section 5. Board Responsibilities.** The Library Board shall have the responsibility for advising and making recommendations to the Community Services Director and to the Mayor and Council, on all matters pertaining to the planning, acquisition, development and management of the library.

[Section 5 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 6. Budget.** The Library Board shall participate in the preparation of the annual budget and shall recommend to the Budget Officer a budget for the expenditure of all funds produced by tax or other means for the development, promotion and management of the library in the City of Woodburn.

**Section 7. Rules and Regulations.** The Library Board shall recommend to the Mayor and City Council reasonable rules and regulations governing the use of and proper conduct in the library in the City of Woodburn.

**Section 8. Supervision of Director.** The City Administrator shall have the responsibility for the hiring, termination, discipline and any other personnel actions affecting the Community Services Director. The Board shall act in an advisory capacity in the selection, discipline, or termination of the Director.

[Section 8 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 9. Internal Administrative Policies and Procedures.** The City Administrator shall be the fiscal and internal administrative agent for the library and the department shall operate in conformance with City administrative procedures including those pertaining to the following:

- (1) Personnel, including recruitment, selection, classification and pay for department staff;
- (2) Personnel matters, including discipline and grievances;
- (3) Receipt, disbursement and accounting for monies;
- (4) Maintenance of general books, cost accounting records, and other financial documents;
- (5) Purchasing;
- (6) Budget administration; and
- (7) Operation and maintenance of equipment and buildings.

**Section 10. Assistance to the Board.** The Director shall assist the Board in the performance of its duties, and shall prepare reports as requested by the Board.

**1-36.11**

**1-36.13**

**Section 11. Annual Reports.** The Library Board shall make a full and complete annual report to the City Council and make such other reports as may be required by the Mayor and Council. The Community Services Director shall be responsible for the preparation of the report with Board input.

[Section 11 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 12. Repeal.** Ordinance No. 1797 is hereby repealed.

**Section 13.** [Emergency clause.]

***Passed by the Council June 12, 2000 and approved by the Mayor June 13, 2000.***

**ORDINANCE NO. 2270****AN ORDINANCE CREATING A RECREATION AND PARK BOARD, DEFINING ITS DUTIES AND RESPONSIBILITIES, REPEALING ORDINANCE 1796 AND DECLARING AN EMERGENCY.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The Woodburn Recreation and Park Board is hereby created to advise and make recommendations to the Community Services Director, and when appropriate, the Mayor and City Council, on all matters related to the development and management of parks, recreation facilities and a program of leisure and recreational services in the City of Woodburn, and to formulate and adopt rules and regulations governing the use of those facilities.

[Section 1 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 2. Board Membership.** The Board shall consist of seven (7) members, appointed by the Mayor with the approval of the City Council, and shall be responsible to the Mayor and City Council. Six (6) members shall be appointed from resident voters of the City or of the urban growth boundary. The seventh member shall be appointed from the student body of Woodburn High School and need not be a resident voter. Members shall possess a background and interest in library science and programs, library management and operations, or literacy. Members shall serve without pay. Terms of office, excepting that of the member appointed from the student body from Woodburn High School, shall be four (4) years from the date of appointment and staggered so three positions will expire every two years. The term of office for the member appointed from Woodburn High School shall be one (1) year from the date of appointment, which shall be in August. All other appointments shall be made annually, in December, or upon the expiration or other termination of the member's term of office. Each member of the Committee serves at the pleasure of the Mayor and City Council and may be removed prior to expiration of their terms without cause or hearing. Members may be removed by the Mayor pursuant to City resolution. In addition to the appointed members, the Mayor or the Mayor's representative and the Director will serve as ex-officio members.

[Section 2 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 3. Meetings.** The Board shall meet at such times as the Board may determine are appropriate and necessary. All Board meetings shall be conducted in accordance with the bylaws of the organization, the provisions of this ordinance and with law.

**Section 4. Officers.** The Recreation and Park Board shall, at its first annual meeting, elect a chairman, secretary and such other officers as the Board may deem appropriate. Officers shall have such duties and authority as the Board shall establish, consistent with its bylaws, other provisions of this ordinance and with law.

1-37.5

1-37.12

**Section 5. Board Responsibilities.** The Recreation and Park Board shall have the responsibility for advising and making recommendations to the Community Services Director, and when appropriate, to the Mayor and Council, on all matters pertaining to the planning, acquisition, development and management of leisure services operated or owned by the City near or adjacent thereto.

[Section 5 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 6. Budget.** The Recreation and Park Board shall participate in the preparation of the annual budget and shall recommend to the budget officer a budget for the expenditure of all funds produced by tax or other means for the development, promotion and management of parks, recreation facilities and leisure services in the City of Woodburn.

**Section 7. Rules and Regulations.** The Recreation and Park Board shall recommend to the Mayor and City Council reasonable rules and regulations governing the use and proper conduct of parks, recreation facilities and leisure services in the City of Woodburn.

**Section 8. Supervision of Director.** The City Administrator shall have the responsibility for the hiring, termination, discipline and any other personnel actions affecting the Community Services Director. The Board shall act in an advisory capacity in the selection, discipline, or termination of the Director.

[Section 8 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 9. Internal Administrative Policies and Procedures.** The City Administrator shall be the fiscal and internal administrative agent for the Recreation and Park Department and the department shall operate in conformance with city administrative procedures including those pertaining to the following: (1) Personnel, including recruitment, selection, classification and pay for department staff; (2) Personnel matters, including discipline and grievances; (3) Receipt, disbursement, and accounting for monies; (4) Maintenance of general books, cost accounting records, and other financial documents; (5) Purchasing; (6) Budget administration; and (7) Operation and maintenance of equipment and buildings.

**Section 10. Assistance to the Board.** The Director shall assist the Board in the performance of its duties, and shall prepare reports as requested by the Board.

**Section 11. Annual Reports.** The Recreation and Park Board shall make a full and complete report to the City Council and make such other reports as may be required by the Mayor and Council. The Community Services Director shall be responsible for the preparation of the report with Board input.

[Section 11 as amended by Ordinance 2412, passed November 13, 2006.]

**Section 12. Repeal.** Ordinance No. 1796 is hereby repealed.

**1-37.13**

**1-37.13**

**Section 13.** [Emergency clause.]

***Passed by the Council June 26, 2000 and approved by the Mayor June 28, 2000.***

**ORDINANCE NO. 2304**

**AN ORDINANCE RELATING TO REAPPORTIONMENT OF WARD BOUNDARIES, REPEALING ORDINANCE 2075, AND DECLARING AN EMERGENCY.**

[Whereas clauses.]

**The City of Woodburn Ordains as Follows:**

**Section 1.** That the City Of Woodburn is hereby divided into six wards, which shall be designated as Wards I, II, III, IV, V, and VI.

**Section 2.** That the boundaries of the six wards created by section 1 above shall be as indicated on a map known as "Ward Map of 2001", a copy of which is attached hereto and, by this reference, incorporated herein.

**Section 3.** That two (2) copies of said ward map are on file in the office of the City Recorder, and said map of boundaries indicated thereon are hereby adopted until such time as they shall be amended or abolished by ordinance or Charter.

**Section 4.** That Ordinance 2075 is repealed.

**Section 5.** That a copy of this ordinance and the attached Ward Map of 2001 be sent to the elections department of Marion County.

**Section 6.** [Emergency clause.]

***Passed by the Council November 13, 2001 and approved by the Mayor November 14, 2001.***

**ORDINANCE NO. 2308**

**AN ORDINANCE ADOPTING WOODBURN PERSONNEL POLICIES AND PROCEDURES MANUAL FOR CITY EMPLOYEES, AND REPEALING ORDINANCE NO. 2065.**

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1.** The Woodburn Personnel Policies and Procedures Manual revision, a copy of which is attached and incorporated by this reference, is hereby adopted and made applicable to city employees as provided therein.

**Section 2.** Ordinance 2065 is hereby repealed.

***Passed by the Council January 14, 2002 and approved by the Mayor  
January 15, 2002.***

The complete text of this document is on file for reference in the office of the City Recorder.

**ORDINANCE NO. 2284****AN ORDINANCE RELATING TO TELECOMMUNICATIONS WITHIN THE CITY; PROVIDING FOR THE MANAGEMENT OF PUBLIC RIGHTS OF WAY; AND DECLARING AN EMERGENCY.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The purpose and intent of this Ordinance are to:

- (1) Comply with the 1996 Telecommunications Act as it applies to local governments, telecommunications carriers and the services those carriers offer;
- (2) Promote competition on a competitively neutral basis in the provision of telecommunications services;
- (3) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the City's businesses and residents;
- (4) Permit and manage reasonable access to the City's public rights-of-way for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights of way held in trust by the City;
- (5) Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
- (6) Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right of way;
- (7) Assure that all telecommunications carriers providing facilities or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;
- (8) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- (9) Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

**Section 2. Definitions.** As used in this Ordinance, the following definitions apply. Words not defined shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

**1-42.2****1-42.2**

- (1) "Aboveground Facilities" See Overhead Facilities.
- (2) "Affiliated Interest" has the same meaning as ORS 759.010.
- (3) "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as now and hereafter amended.
- (4) "Cable service" is defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (5) "City" means the City of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.
- (6) "City Administrator" means the City Administrator of the City of Woodburn.
- (7) "City Engineer" means the City Engineer of the City of Woodburn.
- (8) "City property" includes all real property owned by the City, other than public rights of way and utility easements as defined in this ordinance, and all property held in a proprietary capacity by the City that are not subject to right of way franchising under this Ordinance.
- (9) "Control" or "controlling interest" means actual working control in whatever manner exercised.
- (10) "Conduit" means any structure or portion of a structure containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for telegraph, telephone, cable television, electrical, or communications conductors, or cable right of way, owned or controlled, in whole or in part, by one or more public utilities.
- (11) "Construction" means an activity in the public rights of way resulting in physical change, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.
- (12) "Days" means calendar days unless otherwise specified.
- (13) "Duct" means a single enclosed raceway for conductors or cable.
- (14) "Emergency" has the meaning provided for in ORS 401.025.
- (15) "Federal Communications Commission" or "FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

(16) "Franchise" means an agreement between the City and a grantee which grants a privilege to use public right of way and utility easements within the City for a dedicated purpose and for specific compensation.

(17) "Grantee" means the person to which a franchise is granted by the City.

(18) "Oregon Public Utilities Commission" or "OPUC" means the statutorily-created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

(19) "Overhead" or "Aboveground Facilities" means utility poles, utility facilities and telecommunications facilities on or above the surface of the ground, including the underground supports and foundations for such facilities.

(20) "Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

(21) "Private telecommunications network" means a system, including the construction, maintenance or operation of the system, for the provision of a service or portion of a service that is owned or operated exclusively by a person for his or her use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

(22) "Public rights of way" means a strip of land reserved for public uses such as roadways and sewer and water lines and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights of way" also includes utility easements as defined below.

(23) "Telecommunications" means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(24) "Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. 151 et seq.) and as hereafter amended.

(25) Telecommunications carrier means a provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City.

(25) "Telecommunications facilities" means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier.

**1-42.2****1-42.3**

(26) "Telecommunications service" means two-way switched access and transport of voice communications but does not include: a) services provided by radio common carrier; b) one-way transmission of television signals; c) surveying; d) private telecommunications networks; or e) communications of the customer which take place on the customer side of on-premises equipment.

(27) "Telecommunications system" see "Telecommunications facilities" above.

(28) "Telecommunications utility" has the same meaning as ORS 759.005(1).

(29) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

(30) "Usable space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

(31) "Utility easement" means an easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

(32) "Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right of way of the City and used or to be used for the purpose of providing utility or telecommunications services.

### **Section 3. Jurisdiction and Management of the Public Rights of Way**

(1) The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.

(2) Public rights of way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.

(3) The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way. The City has jurisdiction and regulatory management of each right of way whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(4) No person may occupy or encroach on a public right of way without the permission of the City. The City grants permission to use rights of way by franchises and permits.

**1-42.3****1-42.6**

(5) The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.

(6) The City retains the right and privilege to cut or move any telecommunications facilities located within the public rights of way of the City, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

#### **Section 4. Regulatory Fees and Compensation Not a Tax.**

(1) The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, are separate from, and in addition to all federal, state, local, and City charges as may be levied, imposed, or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.

(2) The City has determined that any fee provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

(3) The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

#### **Section 5. Purpose of Registration.** The purpose of registration is:

(1) To assure that all telecommunications carriers who have facilities or provide services within the City comply with the ordinances, rules and regulations of the City.

(2) To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City.

(3) To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.

#### **Section 6. Registration Required.**

(1) Except as provided in Section 7 of this ordinance, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register with the City. The appropriate application and license from the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

1-42.6

1-42.9

(a) The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.

(b) The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.

(c) A description of the registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.

(d) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

(2) Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council

**Section 7. Exceptions to Registration.** The following telecommunications carriers are excepted from registration:

(1) Telecommunications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State.

(2) A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

**Section 8. Construction Standards.**

(1) No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right of way except as provided in this Ordinance, and with all other applicable codes, ordinances, rules, and regulations.

(2) Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

**Section 9. Construction Permits.** No person shall construct or install any telecommunications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in this Ordinance. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way unless:

---

**1-42.9****1-42.10**

(1) The telecommunications carrier has first filed a registration statement with the City pursuant to this Ordinance; and if applicable,

(2) The telecommunications carrier has first applied for and received a franchise pursuant to this Ordinance.

### **Section 10. Permit Applications.**

(1) Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(a) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(b) That the facilities will be constructed in accordance with the franchise agreement.

(c) The location and route of all facilities to be installed aboveground or on existing utility poles.

(d) The location and route of all new facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the public rights of way. Applicant's existing facilities shall be differentiated on the plans from new construction.

(e) The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights of way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.

(f) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

(g) Details of work area restoration including but limited to paving, compaction, landscaping.

(2) All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

**1-42.10****1-42.17**

(3) All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the City Engineer.

(4) City will review application and may make requests for elevation and horizontal location to eliminate planned existing conflicts with other underground lines.

**Section 11. Construction Permit Fee.** Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council. Such fees shall be designed to defray the costs of city administration of the requirements of this ordinance.

**Section 12. Issuance of Permit.** If satisfied that the applications, plans and documents submitted comply with all requirements of this Ordinance and the franchise agreement, the City Engineer shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

**Section 13. Notice of Construction.** Except in the case of an emergency, the permittee shall notify the Engineering and Building Department not less than two working days in advance of any excavation or construction in the public rights of way.

**Section 14. Compliance with Permit.** All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Engineering and Building Department and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

**Section 15. Noncomplying Work.** Subject to the notice requirements in Section 13, all work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with this Ordinance.

**Section 16. Completion of Construction.** The permittee shall comply with any time lines and special construction activity conditions placed on the construction permit and promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City Engineer.

**Section 17. As-Built Drawings.** If requested by the City for a necessary public purpose, as determined by the City, the permittee shall furnish the City with up to two complete sets of plans drawn to scale and certified to the City as accurately depicting

**1-42.17****1-42.19**

the location of all telecommunications facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within 60 days after completion of construction, in a format mutually acceptable to the permittee and the City.

**Section 18. Restoration of Public Rights of Way and City Property.**

(1) When a permittee, or any person acting on its behalf, does any work in or affecting a public right of way or City property, it shall, at its own expense, promptly remove any obstructions and restore the ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.

(2) If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights of way or property at the permittee's sole expense. The permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

(3) If the permittee fails to restore rights of way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

(4) A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

**Section 19. Performance and Completion Bond.** Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of constructing permittee's telecommunications facilities within the public rights of way of the City, shall be provided before construction is commenced.

(1) The surety shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City Engineer, including restoration of public rights of way and other property affected by the construction.

(2) The surety shall guarantee, to the satisfaction of the City:

(a) Timely completion of construction;

1-42.19

1-42.22

- (b) Construction in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the City;
- (d) Restoration of the public rights of way and other property affected by the construction; and
- (e) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.
- (f) Maintenance for one year of trench areas, pavement, landscaping, and areas disrupted by the construction.

**Section 20. Location of Facilities.** All facilities located within the public right of way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

(1) Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right of way of the City, a grantee with permission to occupy the same public right of way must also locate its telecommunications facilities underground.

(2) Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right of way of the City, a grantee that currently occupies the same public right of way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right of way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law.

**Section 21. Interference with Public Rights of Way.** No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All use of public rights of way shall be consistent with City codes, ordinances and regulations.

**Section 22. Relocation or Removal of Facilities.** Except in the case of an emergency, within 90 days following written notice from the City, a grantee shall, at no expense to Grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights of way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights of way.

**1-42.22****1-42.24**

(2) The operations of the City or other governmental entity in or upon the public rights of way.

(3) The public interest.

**Section 23. Removal of Unauthorized Facilities.** Within 30 days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains an unauthorized telecommunications system, facility, or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities and appurtenances from the public rights of way of the City. Both parties are required to participate in good faith negotiations on such issues. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) One year after the expiration or termination of the grantee's telecommunications franchise.

(2) Upon abandonment of a facility within the public rights of way of the City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced. The City shall make a reasonable attempt to contact the telecommunications carrier before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if there is no apparent risk to the public safety, health, or welfare.

(3) If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.

(4) If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

**Section 24. Coordination of Construction Activities.** All grantees are required to make a good faith effort to cooperate with the City.

(1) By January 1 of each year, grantees shall provide the City with a schedule of their known proposed construction activities in, around or that may affect the public rights of way.

(2) If requested by the City, each grantee shall meet with the City annually or as determined by the City, to schedule and coordinate construction in the public rights of way. At that time, City will provide available information on plans for local, state, and/or federal construction projects.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

1-42.25

1-42.29

**Section 25. Telecommunications Franchise.** A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the City.

**Section 26. Application.** Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:

- (1) The identity of the applicant.
- (2) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.
- (3) Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities.
- (4) The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.
- (5) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.
- 6) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

**Section 27. Application and Review Fee.**

- (1) Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
- (2) An application and review fee of \$2,000 shall be deposited with the City as part of the application filed pursuant to Section 26 above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

**Section 28. Determination by the City.** The City Council shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

**Section 29. Rights Granted.** No franchise granted pursuant to this Ordinance shall convey any right, title or interest in the public rights of way, but shall be deemed a grant to use and occupy the public rights of way for the limited purposes and term, and upon the conditions stated in the franchise agreement.

**Section 30. Term of Grant.** Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of five years.

**Section 31. Franchise Territory.** Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be limited to a specific geographic area of the City to be served by the franchise grantee, and the public rights of way necessary to serve such areas, and may include the entire city.

**Section 32. Franchise Fee.** Each franchise granted by the City is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted. Nothing in this Ordinance shall prohibit the City and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.

**Section 33. Amendment of Grant.** Conditions for amending a franchise:

(1) A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights of way of the City that are not included in a franchise previously granted under this Ordinance.

(2) If ordered by the City to locate or relocate its telecommunications facilities in public rights of way not included in a previously granted franchise, the City shall grant an amendment without further application.

(3) A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this Ordinance.

**Section 34. Renewal Applications.** A grantee that desires to renew its franchise under this Ordinance shall file an application with the City for renewal of its franchise, not less than 180 days before expiration of the current agreement, which shall include the following information:

(1) The information required under Section 26 of this Ordinance.

(2) Any information required pursuant to the franchise agreement between the City and the grantee.

**Section 35. Renewal Determinations.** Within 90 days after receiving a complete renewal application under Section 34, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

(1) The financial and technical ability of the applicant.

---

**1-42.35****1-42.38**

- (2) The legal ability of the applicant.
- (3) The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.
- (4) The applicant's compliance with the requirements of this Ordinance and the franchise agreement.
- (5) Applicable federal, state and local telecommunications laws, rules and policies.
- (6) Such other factors as may demonstrate that the continued grant to use the public rights of way will serve the community interest.

**Section 36. Obligation to Cure As a Condition of Renewal.** No franchise shall be renewed until all ongoing violations or defaults in the grantee's performance of the agreement, or of this Ordinance, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City Council.

**Section 37. Assignments or Transfers of System or Franchise.** Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

(1) Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

(2) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this Ordinance.

(3) Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications franchise.

(4) A transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the City Council under this Section or under a franchise agreement shall be void and is cause for revocation of the franchise.

**Section 38. Revocation or Termination of Franchise.** A franchise to use or occupy public rights of way of the City may be revoked for the following reasons:

(1) Construction or operation in the City or in the public rights of way of the City without a construction permit.

**1-42.38****1-42.41**

- (2) Construction or operation at an unauthorized location.
- (3) Failure to comply with Section 37 of this Ordinance with respect to sale, transfer or assignment of a telecommunications system or franchise.
- (4) Misrepresentation by or on behalf of a grantee in any application to the City.
- (5) Abandonment of telecommunications facilities in the public rights of way. As used in this ordinance, "abandonment" refers to facilities remaining in the right of way following the expiration of the franchise, or not otherwise used to provide services, for a period of one year.
- (6) Failure to relocate or remove facilities as required in this Ordinance.
- (7) Failure to pay taxes, compensation, fees or costs when and as due the City under this ordinance.
- (8) Insolvency or bankruptcy of the grantee.
- (9) Violation of material provisions of this Ordinance.
- (10) Violation of the material terms of a franchise agreement.

**Section 39. Notice and Duty to Cure.** If the City believes that grounds exist for revocation of a franchise, the City shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:

- (1) Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (2) Rebutts the alleged violation or noncompliance; and/or
- (3) It would be in the public interest to impose some penalty or sanction less than revocation.

**Section 40. Public Hearing.** If a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 39, the City Administrator may refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

**Section 41. Standards for Revocation or Lesser Sanctions.** If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the City Council shall determine whether to revoke the

**1-42.41****1-42.46**

franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

- (1) The misconduct was egregious.
- (2) Substantial harm resulted.
- (3) The violation was intentional.
- (4) There is a history of prior violations of the same or other requirements.
- (5) There is a history of overall compliance.
- (6) The violation was voluntarily disclosed, admitted or cured.

**Section 42. Other City Costs.** All grantees shall, within 30 days after written demand, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.

**Section 43. Facilities.** Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public rights of way. Grantees shall provide updated maps to the City semi-annually.

**Section 44. Damage to Grantee's Facilities.** Unless directly and proximately caused by negligent, careless, wrongful, willful, intentional or malicious acts by the City, and consistent with Oregon law, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights of way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the City, or for any consequential losses resulting directly or indirectly from such acts.

**Section 45. Duty to Provide Information.** Except in emergencies, within 60 days of a written request from the City, each grantee shall furnish the City with the following:

- (1) Information sufficient to demonstrate that grantee has complied with all requirements of this Ordinance.
- (2) All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the City at reasonable times and intervals.

**Section 46. Service to the City.** If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the City the grantee's most favorable rate

offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and grantee.

**Section 47. Compensation for City Property.** If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

**Section 48. Cable Franchise.** Telecommunication carriers providing cable service shall be subject to the requirements for cable franchises.

**Section 49. Leased Capacity.** A grantee has the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; however, the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

**Section 50. Grantee Insurance.** Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

- (1) Comprehensive general liability insurance with limits not less than
  - (a) \$3,000,000 for bodily injury or death to each person;
  - (b) \$3,000,000 for property damage resulting from any one accident;
 and,
  - (c) \$3,000,000 for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.
- (5) The grantee shall maintain liability insurance policies required by this Section throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

1-42.50

1-42.54

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Woodburn City Attorney of such intent to cancel or not to renew."

(6) Within 60 days after receipt by the City of said notice, and in no event later than 30 days prior to cancellation, the grantee shall obtain and furnish evidence to the City that the grantee meets the requirements of this Section.

(7) As an alternative to the insurance requirements listed above, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

(8) Grantees shall either provide insurance coverage as described above for their contractors and subcontractors or require that the contractors and subcontractors provide evidence of such insurance coverage before beginning work in the public rights of way

**Section 51. General Indemnification.** To the extent permitted by law, each franchise agreement shall include grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a franchise agreement made or entered into pursuant to this Ordinance.

**Section 52. Performance Surety.** Before a franchise granted pursuant to this Ordinance is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by Section 19 of this Ordinance for construction of facilities.

**Section 53. Governing Law.** A franchise granted under this Ordinance is subject to the Constitution and laws of the United States, the State of Oregon and the ordinances and Charter of the City.

**Section 54. Written Agreement.** No franchise shall be granted under this ordinance unless the agreement is in writing.

**Section 55. Nonexclusive Grant.** No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of telecommunications services or any other purposes.

**Section 56. Severability and Preemption.** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Ordinance shall not be affected but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions. Each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. If federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. If such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall be binding, without the requirement of further action on the part of the City.

**Section 57. Penalty.** In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance. Each violation of this Ordinance constitutes a separate Civil Infraction, and each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

**Section 58. Other Remedies.** Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

**Section 59. Captions.** The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections. Such captions shall not affect the meaning or interpretation of this Ordinance and constitute no part of the law.

**Section 60. Compliance with Laws.** A grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of its administrative agencies, as well as all ordinances, resolutions, rules and regulations of the City adopted or established during the entire term of a franchise granted under this Ordinance, that are relevant and relate to the construction, maintenance and operation of a telecommunications system.

**Section 61. Consent.** Wherever the consent of either the City or of the grantee is specifically required by this Ordinance or in a franchise granted, such consent will not be unreasonably withheld.

---

**1-42.62****1-42.64**

**Section 62. Application to Existing Ordinance and Agreements.** To the extent that this Ordinance is not in conflict with and can be implemented with existing ordinance and franchise agreements, this Ordinance shall apply to all existing ordinance and franchise agreements for use of the public right of way for telecommunications.

**Section 63. Confidentiality.** The City shall preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

**Section 64.** [Emergency clause.]

***Passed by the Council April 12, 2001, and approved by the Mayor April 13, 2001.***

**ORDINANCE NO. 2315**

**AN ORDINANCE ADOPTING PROCEDURES TO PREPARE FOR AND CARRY OUT ACTIVITIES TO PREVENT, MINIMIZE, RESPOND TO OR RECOVER FROM EMERGENCIES; PROVIDING A PROCESS FOR THE DECLARATION OF A STATE OF EMERGENCY; GRANTING THE AUTHORITY TO ORDER MANDATORY EVACUATIONS; PRESCRIBING A PENALTY; AND DECLARING AN EMERGENCY.**

**[Whereas clauses.]**

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Title.** This ordinance shall be known as the Emergency Management Ordinance of the City of Woodburn.

**Section 2. Purpose.** The purpose of this ordinance is to provide procedures to minimize injuries to persons and property and to prepare for, respond to, and recover from any emergency within the incorporated area of the City of Woodburn. This ordinance is implemented by the City of Woodburn Emergency Management Plan. The authority to enact this ordinance is granted by the Woodburn Charter and ORS Chapter 401.

**Section 3. Definition of Emergency.** “Emergency” is defined pursuant to ORS 401.025(4) as “any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.”

**Section 4. Emergency Management Agency.** Pursuant to ORS 401.305, an “Emergency Management Agency” for the City of Woodburn is hereby established as specified in the City of Woodburn Emergency Management Plan which is incorporated herein by reference. The functions of the Emergency Management Agency include, but are not limited to, program development, fiscal management, coordination with government and nongovernmental agencies and organizations, public information, personnel training and development and implementation of exercises to test the system.

**Section 5. Emergency Management Plan.** The procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from emergencies within the City of Woodburn are set out in the City of Woodburn Emergency Management Plan which is incorporated herein by reference.

**Section 6. Emergency Program Manager.** The City Administrator shall appoint an Emergency Program Manager who shall be responsible for the organization, administration, and operation of the agency and coordination of emergency activities

1-43.7

1-43.12

with county, state, and other governments and private organizations, subject to the direction and control of the City Council and City Administrator.

**Section 7. Declaration of State of Emergency.** The authority to declare a state of emergency is delegated to the City Administrator. If the City Administrator is unable to act due to absence or incapacity, the Emergency Program Manager is delegated authority. If in the judgment of the Incident Commander, time does not permit access to the others authorized, the Incident Commander may declare a state of emergency. The City Council shall convene as soon as practical to ratify the state of emergency declaration. The declaration must include a description of the situation, existing conditions, and must delineate the geographic boundaries involved.

**Section 8. Conditions Required to Declare a State of Emergency.** A state of emergency may be declared whenever an event or circumstance exists within the City of Woodburn that meets the definition of an emergency and requires a response under the City of Woodburn Emergency Management Plan.

**Section 9. Authority to Order Mandatory Evacuations.** After a state of emergency has been declared, the City Administrator or Incident Commander may order mandatory evacuations of residents and other individuals pursuant to the City of Woodburn Emergency Management Plan if necessary for public safety or the efficient conduct of activities that minimize or mitigate the effects of the emergency.

**Section 10. Penalty.**

A. Any person, firm, corporation, association or entity who violates any emergency measure taken under the authority of this ordinance shall be subject, upon conviction, to a fine of not more than \$500 per offense.

B. Each day of violation shall be deemed a separate offense for purposes of imposition of penalty.

C. The penalty provisions contained in this ordinance are in addition to and not in lieu of any other procedures and remedies provided to the city by law, including equitable relief and damages.

**Section 11. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

**Section 12.** [Emergency clause.]

***Passed by the Council May 13, 2002 and approved by the Mayor  
May 14, 2002.***

---

**THE FULL TEXT OF THE EMERGENCY MANAGEMENT PLAN IS ON FILE FOR REFERENCE IN THE OFFICE OF THE CITY RECORDER.**

## ORDINANCE NO. 2378

**AN ORDINANCE REGARDING MEASURE 37 CLAIMS; ESTABLISHING A PROCESS FOR THE CITY TO EVALUATE SAID CLAIMS SO THAT THE CITY CAN DECIDE SAID CLAIMS ON A RATIONAL BASIS; AND DECLARING AN EMERGENCY.**

[Whereas clauses.]

**Section 1. Findings.** The City makes the following findings:

A. On November 2, 2004, the voters of the State of Oregon approved Measure 37. The measure amends ORS Chapter 197 to require, under certain circumstances, payment of compensation to owners of real property if government land use regulations reduce fair market property value; and

B. Measure 37 provides that to receive compensation, an owner of real property must make a “written claim for compensation” to the government entity enacting a new land use regulation or enforcing an existing a land use regulation that allegedly restricts the use of their property and has the effect of reducing its fair market value; and

C. Measure 37 authorizes the City to adopt necessary claims procedures; and

D. Measure 37 requires payment of just compensation for any reduction in fair market value of real property, or in the alternative allows cities to modify, remove or not apply the land use regulation allegedly reducing a property's fair market value; and

E. The City has a duty to safeguard public funds and not pay public funds to private parties without a legal justification and a rational basis; and

F. Measure 37 imposes a new duty on the City to review claims for compensation and make decisions on those claims. A determination to waive or modify a land use regulation, or compensate a property owner must be based on substantial factual information and analysis. Necessary information must be provided by a real property owner when making a written claim for compensation; and

G. Measure 37 states that if a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of the measure that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation; and

H. Except for certain new land use regulations, the City finds it is necessary and required that the City make a Measure 37 determination as to whether a land use regulation should be enforced prior to a claim accruing under Measure 37; and

1-46.1

1-46.3

I. The City finds that it is necessary for Measure 37 claimants to provide factual and analytical information regarding their claims so that the City can evaluate the claims and have a rational basis to decide the claims.

**Section 2. Accrual of Claims.** Except in cases where the enactment of a new land use regulation by the City is shown by Claimant to restrict the use of private real property and have the effect of reducing the fair market value of the property, no enforcement of a land use regulation under Measure 37 shall be deemed to have occurred and no claim under Measure 37 shall have accrued until the City is provided necessary information under this Ordinance to evaluate and decide the Measure 37 claim presented by Claimant on a rational basis.

**Section 3. Definitions.** As used in this Ordinance, the following words and phrases mean:

**City Administrator.** The City Administrator of the City of Woodburn, or the City Administrator's designee.

**Claim.** A claim filed under Measure 37.

**Claimant.** The owner of property making a claim under Measure 37 and this Ordinance, or their designee, so long as written authorization is provided to the City by the property owner for the designee to represent the owner in making the claim.

**Exempt Land Use Regulation.** A land use regulation that:

1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
2. Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, pollution control regulations, wetlands and floodplain regulations, grading and fill regulations, landslide hazard regulations, and street regulations, wireless communication facility siting regulations, tree preservation regulations, sign regulations, setback and fencing regulations and natural resource regulations to the extent they are determined necessary for public health and safety;
3. Is required in order to comply with federal law;
4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing;
5. Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first; or

1-46.3

1-46.4

**Family Member.** Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

**Land Use Regulation.** Includes:

1. Any statute regulating the use of land or any interest therein;
2. Administrative rules and goals of the Land Conservation and Development Commission;
3. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances; and
4. Statutes and administrative rules regulating farming and forest practices as applicable to lands in the City.

A land use regulation does not include any City system development charge or any other City development fee or charge.

**Owner.** The present Owner of the property, or any interest therein.

**Section 4. Claim Filing Procedures.**

A. A person seeking to file a claim under this Ordinance must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the City Administrator's office, or another department of the City if so designated by the City Administrator.

B. A claim shall include a completed claim form, which will be provided by the City, together with the following additional information:

1. The name(s), address(es) and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees or easement holders, and a description of the ownership interest of each;
2. The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued by a title company no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by Claimant, and the date the property was acquired by the present Owner. Where it is necessary for the City to evaluate the claim, all "chain of title" information shall be included;

1-46.4

1-46.7

3. The land use regulation that Claimant alleges restricts the use of the real property and allegedly causes a reduction in the fair market value of the property;

4. Claimant shall specify the remedy sought. Claimant may specify alternative remedies. If Claimant is seeking "just compensation," the amount of the claim, based on the alleged reduction in value of the real property shall be supported by an appraisal by an appraiser licensed by the State of Oregon establishing the reduction in the fair market value of the property as of the date of the claim;

5. Copies of any leases or Covenants, Conditions and Restrictions (CCR's) applicable to the property, if any, that impose restrictions on the use of the property, or which would affect its valuation;

6. Identification of the particular use that is proposed for the property and proof that the requested use was allowed as proposed at the time the owner or family member acquired the property;

7. Where the claim is based on family descent, proof that the former owner(s) was a family member of the present owner.

8. A list of names of property owners, certified by either a title company or the Marion County Assessor, or all current owners of record of all properties that lie within 500 feet of the perimeter boundary of the real property subject to the claim;

9. Signatures of all owners or those claiming ownership in the property over which the claim is being made; and

10. A deposit for costs in the amount of \$500, and which will be administered, billed and collected as provided for in this Ordinance.

**Section 5. Voluntary Claim Conference.** Before submitting a claim, or at any time after a claim is submitted, Claimant may request a claim conference with the City Administrator or designee. The City Administrator or designee is not authorized to settle any claim at a Claim Conference, but may use the conference to fully discuss the claim with Claimant and may include information on this discussion in the City Administrator's report to the City Council.

**Section 6. Burden of Proof.** Claimant has the burden of presenting sufficient evidence under this Ordinance so that the City can rationally apply Measure 37 to the claim.

**Section 7. Claim Review Process.**

A. The City Administrator shall assess any claim and make a recommendation to the City Council on the disposition of the claim.

**1-46.7****1-46.7**

B. The City Administrator shall mail notice of the claim to Claimant and to all owners of record of the property, and to all owners of property within five hundred (500) feet of the property that is subject of the notice, as listed on the most recent property tax assessment roll where such property is located.

C. The City Administrator's notice shall:

1. State the basis of the claim, the amount of the compensation sought and the regulation that causes the compensation to be alleged to be due.

2. Identify the property by the street address or other easily understood geographical reference;

3. State that persons notified may provide written comments on the claim, and provide the date written comments are due or, if a hearing has been scheduled, the date, time and location of the hearing;

4. Identify the City representative and telephone number to contact to obtain additional information; and

5. State that a copy of the claim and the supporting documents is available for inspection at no cost, and that copies will be provided at reasonable cost.

D. The City Administrator shall schedule a public hearing, in the City Administrator's discretion, after having an opportunity to review the Claim.

E. If a hearing is conducted:

1. Claimant and all interested parties may present and submit documents and evidence.

2. Any staff report used at the hearing shall be available prior to the hearing.

3. The City, at its discretion, may reopen a record to admit new evidence or testimony.

4. The failure of a person entitled to notice to receive notice as provided in this section shall not invalidate such proceedings. The notice provisions of this section shall not restrict the giving of notice by other means.

F. The City Administrator shall make a recommendation on the claim to the City Council applying the standards of Measure 37 and based on all of the information received pursuant to this Ordinance.

G. The City Administrator may, in the City Administrator's discretion, retain the services of an appraiser to appraise the property and evaluate the claim to assist in determining the validity of the Claim.

**1-46.7****1-46.7**

H. In deciding a Claim, the City Council will consider the standards of Measure 37 and the information presented by Claimant pursuant to this Ordinance; the benefit(s) accruing to the public arising as a result of application of the regulation; and the burden to the public in paying compensation to Claimant, taking into consideration the available financial resources of the City. The City Council may take, but is not limited to taking, any one or more of the following actions on a claim, as appropriate:

1. Deny the claim based on, but not limited to, any one or more of the following findings:

(a) The land use regulation does not restrict the use of the private real property;

(b) The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation;

(c) The claim was not timely filed;

(d) Claimant failed to provide the necessary information under this Ordinance;

(e) Claimant is not the property owner, or the property was not owned by a family member if that is required for compensation, or was not the property Owner at the time the land use regulation was enacted, enforced or applied;

(f) The land use regulation is an exempt land use regulation;

(g) The land use regulation in question is not an enactment of the City;

(h) The City has not taken action to enact, enforce or apply the land use regulation to the property;

(i) The owner is not entitled to compensation under Measure 37, for a reason other than those provided herein.

2. Award compensation, either in the amount requested, or in some other amount supported by the evidence in the record. Payment of any compensation is subject to the availability and appropriation of funds for that purpose.

3. Modify the regulation.

4. Remove the regulation.

5. Not apply the regulation.

6. Acquire the affected property through negotiation or eminent domain.

**1-46.7****1-46.8**

7. Take such other actions as the City Council deems appropriate consistent with Measure 37.

I. If the City Council removes or modifies the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, all of the land use regulations in effect at the time Claimant acquired the property.

J. The City Council shall have the right to condition any grant of waiver or modification of land use regulations for any purpose, which protects the health, safety and welfare of the public. Any condition so imposed must be clear and concise and related directly to the claim and the use being proposed therein. Failure to comply with any condition of approval is grounds for revocation of the approval of the claim, grounds for recovering any compensation paid and grounds for revocation of any other action taken under Measure 37 and this Ordinance. All conditions, time limits or other restrictions imposed with approval of a claim will bind all subsequent owners of the property.

K. A decision by the City Council to remove or modify a land use regulation shall result in the proposed use allowed by the waiver or modification being thereafter considered a non-conforming use under Oregon Revised Statutes, Oregon Administrative Rules, and the Woodburn Development Ordinance. Upon grant of waiver or modification, Claimant shall cause notice thereof by way of a "License" form provided by the City, to be recorded in the deed records of the subject property so that all future owners thereof are put on notice of the non-conforming use status of the development on the property.

L. Any waiver or modification of land use regulation granted pursuant to this Ordinance under the authority of Measure 37 is personal and shall not be transferred to any third party.

**Section 8. Deposit and Final Bill.**

A. Claimant shall be required to deposit with the City the sum of \$500 as costs for the processing of the claim. The City shall maintain a record of its claim processing costs, including the costs of obtaining information required herein which Claimant does not provide to the City.

B. If a claim is found to be valid by the City or a Circuit Court, then the City shall refund the amount of the deposit to Claimant.

C. If a claim is finally determined to be invalid, then the City Administrator shall send Claimant a final bill showing the total costs incurred by the City in reviewing and acting on the claim, showing credit for the deposits posted, and either refund or bill the balance as dictated by the deposit ledger.

**1-46.8****1-46.14**

D. If the property owner owes an amount to the City and does not pay the amount due within 30 days after the final bill is sent, then the City shall pursue collection, including filing a lien on the property. The City shall be entitled to costs of collection, including attorney fees, costs and disbursements incurred in collection.

**Section 9. Appellate Rights.** Any decision under this Ordinance is not a land use decision, and none of the formalities required of land use decisions by statute, rule or local ordinance are necessary. Appeal of any final decision of the City made hereunder shall not be to the Oregon Land Use Board of Appeals, but to Marion County Circuit Court on Writ of Review pursuant to ORS 34.010 to 34.102.

**Section 10. Record Keeping.** The City shall keep a central record of all Claims made hereunder and the disposition thereof. Specific notation shall be made on the comprehensive plan and zone maps of the existence and extent of any waiver or modification granted under this Ordinance.

**Section 11. Private Cause of Action.** If the City's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the property, the owner(s) of the other property shall have a cause of action in Circuit Court to recover from Claimant the amount of the reduction. This section shall not be construed to create a cause of action against the City of Woodburn.

**Section 12. Attorney Fees.** If an owner commences an action to collect compensation and the City prevails, the City is entitled to all fees and costs it incurred, as well as any sum that a court, including an appellate court, deems reasonable as attorney fees.

**Section 13. Severability.** If any phrase, clause, or other part or parts of this Section 1.950 is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

**Section 14.** [Emergency clause.]

***Passed by the Council November 29, 2004 and approved by the Mayor  
December 1, 2004.***

**ORDINANCE NO. 2381****AN ORDINANCE ADOPTING RULES FOR PUBLIC CONTRACTING; ESTABLISHING CERTAIN CONTRACT CLASS EXEMPTIONS; PROVIDING PROCEDURES FOR PERSONAL SERVICE CONTRACTS; AND DECLARING AN EMERGENCY.**

[Whereas clauses.]

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:****Section 1. Definitions.**

A. "Formal competitive selection procedures" means procedures for public contracting as required by ORS 279B.050(1) (competitive sealed bids or competitive sealed proposals for goods and services), or ORS 279C.335(1) (competitive bids for public improvements) or, for personal service contracts, the same formal procedures required for the selection of goods and services pursuant to ORS 279B.060 (competitive sealed proposals).

B. "Formal competitive selection process" means the process of using formal competitive selection procedures for the procurement of goods and services or for public improvements contracts.

C. "Personal service contracts" include contracts for services that require specialized technical, artistic, creative, professional or communication skills or talent, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the service depends on attributes that are unique to the service provider, other than contracts for an architect, engineer, land surveyor or provider of related services as defined in ORS 279C.100.

**Section 2. Local Contract Review Board.** The City Council of the City of Woodburn is designated as the Local Contract Review Board under the Oregon Public Contracting Code. The Local Contract Review Board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, and the Woodburn City Charter and ordinances.

**Section 3. Contracting Agency.** The City Administrator or his/her designee is designated as the City's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Woodburn as a "Contracting Agency."

**Section 4. Model Rules.** Except as modified herein, or by subsequent ordinance or resolution, the Model Rules, Divisions 46, 47, 48 and 49, adopted by the Attorney General under ORS 279A, 279B, and 279C, as they now exist, and as they may be amended in the future, are hereby adopted as the City's public contracting rules. Words and phrases used by these rules that are defined in ORS subchapters 279A, 279B, and 279C and in the Model Rules, have the same meaning as defined in ORS subchapters 279A, 279B, and 279C and the Model Rules.

1-47.5

1-47.6

**Section 5. Public Contracting Authority.** Administrative staff and departments have contracting authority and responsibilities as follows:

A. The City Administrator is authorized to:

1. Enter into city contracts not to exceed \$75,000 without additional authorization of the Local Contract Review Board. Contracts exceeding \$75,000 for public improvements, identified in a Capital Improvement Plan, that have been approved by the City Council through the budgetary process, shall be deemed to be approved by the Local Contract Review Board.

2. Recommend that the Local Contract Review Board approve or disapprove contract awards in excess of \$75,000, or to change orders or amendments to contracts of more than \$75,000.

3. Adopt forms, computer software, procedures, and administrative policies for all City purchases consistent with the Woodburn City Charter and ordinances.

B. All contracting by departments shall conform to approved City purchasing procedures adopted by the City Administrator or the Local Contract Review Board.

C. Each department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.

D. The City Administrator shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws (including the Oregon Public Contracting Code), policies and procedures.

**Section 6. Formal Competitive Selection Procedures-Exemptions.** All public contracts shall be based upon formal competitive selection requirements of ORS 279B.050(1) or ORS 279C.335(1), except as expressly provided in this subsection, or by subsequent ordinance or resolution. The following classes of public contracts are hereby exempted from the formal competitive selection requirements of ORS 279B.050(1) and ORS 279C.335(1):

A. Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;

B. Any contract expressly exempted from formal competitive selection procedures adopted by ordinance or resolution of the Local Contract Review Board pursuant to ORS 279B.085;

C. Purchases through federal programs pursuant to ORS 279A.180;

**1-47.6****1-47.6**

D. In the event of an emergency involving an immediate hazard to the public health, safety, or welfare, the City Administrator, Finance Director, Public Works Director, or Chief of Police may secure necessary goods and/or services without a formal competitive selection process, provided that the Local Contract Review Board, at a regularly scheduled meeting within 30 days of the procurement, is furnished with a full report of the circumstances and costs of the materials and/or services secured;

E. Contracts for goods or services, or a class of goods or services, which are available from only one source. To the extent reasonably practical, the City Administrator shall negotiate with the sole source to obtain contract terms advantageous to the City. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed \$5,000, but do not exceed \$75,000, must be approved by the City Administrator. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed \$75,000 must be approved by the Local Contract Review Board. The determination of a sole source must be based on written findings that may include:

1. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
3. That the goods or services are for use in a pilot or experimental project;
4. Other findings that support the conclusion that the goods or services are available from only one source; or
5. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed \$5,000, but do not exceed \$75,000, must be approved by the City Administrator. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which exceed \$75,000 must be approved by the Local Contract Review Board;

F. Contracts for products, services or supplies if the value of the contract does not exceed \$5,000. Any procurement of goods or services not exceeding \$5,000 per item may be awarded in any manner deemed practical or convenient by the City Administrator, including by direct selection or award. A contract awarded under this section may be amended to exceed \$5,000 only upon approval of the City Administrator and in no case may exceed \$6,000. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this selection;

G. Contracts for the purchase of copyrighted materials where there is only one supplier available within a reasonable purchase area for such goods;

**1-47.6****1-47.6**

H. Contracts for the purchase of advertising, including that intended for the purpose of giving public or legal notice;

I. Contracts for the procurement of banking services;

J. Contracts for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment if required for efficient utilization of such equipment;

K. Contracts for the purpose of investment of public funds or the borrowing of funds;

L. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulating authority;

M. Contracts not to exceed \$75,000 for the purchase of goods, materials, supplies and services. For contracts for the purchase of goods, materials, supplies and services that are more than \$5,000, but that do not exceed \$75,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

N. Contracts not to exceed \$75,000 for public improvements, including contracts for services of architects, engineers, land surveyors and related services, (other than contracts for a highway, bridge or other transportation projects), if the following conditions are met:

1. The contract is for a single project and is not a component of or related to any other project;

2. When the amount of the public improvement contract (other than contracts for a highway, bridge or other transportation projects) is more than \$5,000, but does not exceed \$75,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

3. The City Administrator shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity and contractor responsibility. If the contract is not awarded on basis of lowest price, the City Administrator shall make a written finding of the basis for the award;

O. Contracts for a highway, bridge or other transportation projects more than \$5,000, but not to exceed \$50,000, if the following conditions are complied with:

**1-47.6****1-47.10**

1. The contract is for a single project and is not a component of or related to any other project;

2. When the amount of the contract for a highway, bridge or other transportation projects is more than \$5,000, but does not exceed \$50,000, a minimum of three competitive written quotes shall be obtained. The City Administrator shall keep a written record of the source and amount of quotes received. If three quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes;

3. The City Administrator shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity and contractor responsibility. If the contract is not awarded on basis of lowest price, the City Administrator shall make a written finding of the basis for the award.

**Section 7. Notice of Public Contracts.** Notice of public improvement contracts or contracts for the purchase of goods or services may be published electronically where the City Administrator finds that such publication is likely to be cost effective as provided in ORS 279C.360.

**Section 8. Disposal of Surplus and Abandoned Property.** The City Administrator shall have the authority to dispose of surplus property and abandoned personal property not owned by the City by any means determined to be in the best interests of the City, including but not limited to, transfer to other departments, government agencies, non-profit organizations, sale, trade, auction, or destruction; provided however, that disposal of personal property having residual value of more than \$10,000 shall be subject to authorization by the Local Contract Review Board.

**Section 9. Personal Service Contracts.** Personal service contracts shall be used to retain the services of independent contractors (other than contracts for an architect, engineer, land surveyor or provider of related services as defined in ORS 279C.100). Nothing in this section shall apply to the employment of regular city employees.

**Section 10. Procedures for Personal Services Contracts.** Personal service contracts are subject to the rules established by this section:

A. Unless otherwise approved by the City Administrator, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.

**1-47.10****1-47.10**

B. Unless otherwise approved by the City Administrator, personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

C. All personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference unless otherwise provided by law.

D. The formal competitive selection procedures described in this section may be waived by the City Administrator when an emergency exists that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the formal competitive selection procedures.

E. Personal service contract proposals may be modified or withdrawn at any time prior to the conclusion of discussions with an offeror.

F. For personal service contracts that are anticipated to cost \$5,000 or less, such contracts must be memorialized by a formal purchase order.

G. For personal service contracts that are anticipated to exceed \$5,000, but not exceed \$75,000, at least three competitive written quotes from prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, shall be solicited. Each solicited contractor shall be notified in reasonable detail of the proposed assignment. Any or all interested prospective contractors may be interviewed for the assignment by an appropriate City employee or by an interview committee.

H. For personal service contracts that are anticipated to cost in excess of \$75,000, the department head for the department that needs the services shall make the following determinations:

1. That the services to be acquired are personal services;
2. That a reasonable inquiry has been conducted as to the availability of City personnel to perform the services, and that the City does not have the personnel nor resources to perform the services required under the proposed contract; and
3. That the department has developed, and fully plans to implement, a written plan for utilizing such services, which will be included in the contractual statement of work.

1-47.10

1-47.12

I. All personal service contracts exceeding \$75,000 shall be based upon formal competitive selection procedures, except as expressly provided in this subsection, or by subsequent ordinance or resolution. For personal service contracts that are anticipated to cost in excess of \$75,000 per year, the department head for the department that needs the services shall follow the formal competitive selection procedures for formal competitive sealed proposals as found in the Model Rules, OAR 137-047-0260.

**Section 11. Personal Services Contracts – Exemptions from Formal Competitive Selection Procedures.** Contracts for personal services are exempt from formal competitive selection procedures if any of the following conditions exist:

A. The contract amount is anticipated to be \$75,000 or less.

B. Contract amendments, which in the aggregate change the original contract price or alters the work to be performed, may be made with the contractor if such change or alternation is less than twenty-percent (25%) of the initial contract, and are subject to the following conditions:

1. The original contract imposes binding obligation on the parties covering the terms and conditions regarding changes in the work; or

2. The amended contract does not substantially alter the scope or nature of the project.

C. The City Administrator finds that there is only one person or entity within a reasonable area that can provide services of the type and quality required.

D. The contract for services is subject to selection procedures established by the State or Federal government.

E. The contract is for non-routine or non-repetitive type legal services provided by attorneys outside of the City Attorney's Office.

**Section 12. Personal Services Contracts-Screening Criteria.** The following criteria shall be considered in the evaluation and selection of a personal service contractor for personal service contracts:

A. Specialized experience in the type of work to be performed.

B. Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

C. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

**1-47.12****1-47.14**

D. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of designing or techniques peculiar to it, where applicable.

E. Cost of the services.

F. Any other factors relevant to the particular contract.

**Section 13. Personal Services Contracts-Selection Process.** The following rules shall be followed in selecting a contractor for personal services:

A. Personal service contracts less than \$5,000 may be awarded in any manner deemed practical including by direct selection or award by the City Administrator (or any person with purchasing authority). A personal service contract awarded under this section may be amended to exceed \$5,000 only upon approval of the City Administrator any in no case may exceed \$6,000. A personal service contract may not be artificially divided or fragmented.

B. For personal service contracts that exceed \$5,000, but do not exceed \$75,000, the department head for the department that needs the services shall award the contract to the offeror whose quote or proposal will best serve the interests of the City, taking into account the relevant criteria found in this ordinance. The Department Head shall make written findings justifying the basis for the award.

C For personal service contracts that will cost \$75,000 or more, the City Administrator shall award the contract based upon the formal competitive selection processes found in the Model Rules. The City Administrator shall make written findings justifying the basis of the award.

D. The City official conducting the selection of a personal service contract shall negotiate a contract with the best qualified offeror for the required services at a compensation determined in writing to be fair and reasonable.

**Section 14.** [Emergency clause.]

***Passed by the Council February 28, 2005 and approved by the Mayor  
March 2, 2005.***

**ORDINANCE NO. 2428****AN ORDINANCE DELEGATING TO THE MUNICIPAL JUDGE THE AUTHORITY TO APPOINT MUNICIPAL JUDGES PRO TEM SUBJECT TO THE PROCESS PROVIDED IN THIS ORDINANCE.**

[Whereas clauses.]

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1.** Consistent with the Charter and pursuant to this Ordinance, one or more Municipal Judges pro tem may be appointed to serve when the Municipal Judge is ill, disqualified or otherwise unavailable. Municipal Judges pro tem, when acting in that capacity, shall have all the duties and powers of the Municipal Judge.

**Section 2.** Municipal Judges pro tem shall be members in good standing of the Oregon State Bar.

**Section 3.** Municipal Judges pro tem may be appointed by the Municipal Judge, subject to the authority vested in the Council under the Charter to hire and terminate judges of the Municipal Court and the discretion of the Council to amend or repeal the procedures provided in this Ordinance. The Municipal Judge may terminate any appointment to the position of Municipal Judge pro tem, with or without cause. The Municipal Judge shall within 30 days advise the Council of all appointments, resignations and terminations of Municipal Judges pro tem. The Council retains its authority to disapprove or terminate the appointment on a Municipal Judge pro tem, with or without cause, but until the Council so acts, a Municipal Judge pro tem shall have the power to serve after taking the oath of office prescribed in Section 28 of the Charter.

**Section 4.** Assignment of a Municipal Judge pro tem to serve in particular matters or cases shall be made by the Municipal Judge. If the Municipal Judge does not make an assignment, it may be made administratively by the clerk of the Municipal Court in accordance with directions or procedures previously established by the Municipal Judge.

**Section 5.** The City Council may by resolution establish the rate of any compensation to be paid to Municipal Judges pro tem for services performed in that capacity.

**Section 6.** Any action, decision or judgment made or taken by a Municipal Judge pro tem prior to the effective date of this Ordinance is in all respects ratified and confirmed, and shall remain effective and binding, whether or not the Municipal Judge pro tem was appointed in accordance with the standards set forth in this Ordinance.

***Passed by the Council January 14, 2008 and approved by the Mayor  
January 16, 2008.***

## ORDINANCE NO. 2433

**AN ORDINANCE REPEALING ORDINANCE 2368 (THE 2004-05 MASTER FEE SCHEDULE); ADOPTING THE 2007-08 REVISED SCHEDULE OF FEES AND CHARGES FOR CITY SERVICES; PROVIDING FOR THE ANNUAL REVIEW OF SAID FEE SCHEDULE; AND SETTING AN EFFECTIVE DATE.**

[Whereas clauses.]

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Repeal.** The 2004-05 Master Fee Schedule adopted on August 9, 2004 as Ordinance 2368 is hereby repealed. All fees and charges which are inconsistent with this Ordinance are hereby repealed.

**Section 2. Fee Schedule Adoption.** The City hereby adopts the 2007-08 Master Fee Schedule affixed hereto as Attachment "A" listing applicable fees and charges which shall be charged and collected for those services enumerated.

**Section 3. Separate Fee For Additional Process.** All fees set by this Ordinance are for each identified process; additional fees shall be required for each additional process or service that is requested or required. Where fees are indicated on a per unit of measurement basis, the fee is for each identified unit or portion thereof within the indicated ranges of such units.

**Section 4. Review.** It is the intention of the City Council to review the fees and charges adopted by this Ordinance on an annual basis based on the City's next annual budget and all the City's costs reasonably borne as established at the time and, if warranted, to revise such fees and charges based thereon.

***Passed by the Council March 10, 2008 and approved by the Mayor  
March 26, 2008.***