

TITLE 12. STREETS, SIDEWALKS, AND PUBLIC PLACES

TITLE 12.04

CONSTRUCTION AND MAINTENANCE OF STREETS, SIDEWALKS, AND CURBS

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12.04.010 PURPOSE OF PROVISIONS

The purpose of this Chapter is to establish standards and uniform policies for the construction, improvement and maintenance of public streets and sidewalks within the City. (Ord. 646, section 1[part], 1988: prior code section 4.305) (Ord. 940, January 2012)

12.04.020 DEFINITIONS

This Chapter's terms, phrases, words, abbreviations, and their derivatives shall be construed as specified herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. The word **Ashall@** is always mandatory and not merely directory. (Ord. 940, January 2012: prior code section 4.015)

FACILITY: Pipe, pipeline, tube, main, service trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed, or maintained in, upon, along, across, under, or over any public place.

PERMITTEE: Any person, firm, partnership, association, corporation, company, or organization of any kind on whose behalf a right-of-way construction permit is obtained.

PERSON: As defined in SMC Chapter 1.04.

PUBLIC FACILITY: Any facility which is immediately or is eventually to be taken over by the City for maintenance and operation. Facilities include, but are not limited to, public utilities, traffic signals and controls, streets, sidewalks, curbs, parking lots, driveways, public buildings, and properties. (Ord. 940, January 2012)

PUBLIC PLACE: Any public street, street right-of-way, place, alley, sidewalk, park, square, plaza, or any other public property owned or controlled by the State of Oregon, the City, Marion County or any other political subdivision of the State of Oregon. (Ord. 940, January 2012)

PUBLIC WORKS DIRECTOR: The Public Works Director for the City of Stayton or designee. (Ord. 940, January 2012)

PUBLIC WORKS FACILITIES: All public streets and public utility systems which are constructed to be immediately or eventually owned, operated and maintained by the City. (Ord. 940, January 2012)

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RIGHT OF WAY: Any opened or unopened street, easement, place, alley, square, plaza or public property owned or controlled by the State of Oregon, City, Marion County or any other political subdivision of the State of Oregon. (Ord. 940, January 2012)

SIDEWALK: A path along the side of a road or street designated for pedestrians and sometimes for the use of nonmotorized vehicles. (Ord. 940, January 2012)

STANDARD SPECIFICATIONS: The uniform design standards and construction specifications for public works facilities for the City of Stayton as adopted by SMC Chapter 12.08 under which all public works facilities shall be constructed in the City. (Ord. 746, '11, June 1995) (Ord. 940, January 2012)

STAYTON TRANSPORTATION SYSTEM PLAN: The “*City of Stayton Transportation System Plan*” that complies with LCC Goal 12, the Transportation Planning Goal, and that has been approved by the City Council. (Ord. 940, January 2012)

STREET IMPROVEMENT: A roadway improvement for the use of motorized vehicles in the public right of way which includes, but is not limited to, pavement surface, base rock, curbs, storm drainage facilities, bridges, bike lanes, traffic signals, signage, striping, landscaping, streetscape elements and/or other special structures. (Ord. 940, January 2012)

12.04.030 COMPLIANCE REQUIRED GENERALLY

1. Except as provided in Sections 12.04.040 through 12.04.380 of this chapter, no person shall construct any building or structure or parking lot improvements within the City and no parcel of land shall be divided within the City, unless:
 - a. The street(s) and sidewalk(s) bordering such lot or area are fully improved to City standards and
 - b. The right-of-way adjacent to the property has been dedicated to the City of Stayton, Marion County or the State of Oregon

All street improvements and right-of-way dedications shall comply with the requirements of this Chapter, the Stayton Transportation System Plan, SMC Chapter 12.08 “Standard Specifications”, and SMC Chapter 17.26 “Transportation Requirements”.

2. No street or sidewalk shall be constructed, replaced or repaired unless such work complies in all manner with the provisions of this Title. (Ord. 940, January 2012)
3. If the City determines a dedication of right-of-way is needed, the Public Works Director shall verify there is a rough proportionality between the required dedication

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and the impact from the proposed site specific development for which the permit is being applied before placing any dedication requirement as a condition of approval. The Public Works Director shall have the right to modify and/or waiver any dedication requirements of SMC Title 12 and SMC Title 17 so that the dedication requirements are roughly proportional to the site specific impacts of the proposed development. Any modification or waiver granted pursuant to this Chapter is subject to review by the City Council pursuant to Section 12.04.090 herein. (Ord. 878, section 1, April 4, 2005; Ord. 886, section 1, February 6, 2006) (Ord. 940, January 2012: prior code section 4.020)

12.04.040 EXEMPTIONS

1. A person applying for a building permit to perform any of the following activities will be exempt from all street and sidewalk improvements of this Chapter if no curb cut is required:
 - a. Demolition of an existing structure;
 - b. Construct an accessory building which will not be used for human occupancy;
 - c. Maintaining, remodeling, or repairing an existing structure; or
 - d. Construction an addition to an existing structure not to exceed 300 sq. ft. in size. (Ord. 940, January 2012)
2. In any case, where a street or sidewalk improvement is constructed as a conditional of approval for a land use permit required by SMC Chapter 17.12 "Development Approval", or SMC Chapter 17.24 "Land Divisions", the requirements of this Chapter are deemed to be satisfied. (Ord. 646, section 1[part], 1988: prior code section 4.316; Ord. 878, section 1, April 4, 2005; Ord. 886, section 1, February 6, 2006) (Ord. 940, January 2012: prior code section 4.030)

12.04.050 SITE INSPECTION: BUILDING PERMIT REQUIREMENTS

1. The Public Works Director or designee will inspect any site for which an application for a building permit has been filed to determine if the adjacent street and sidewalk comply with the provisions of this chapter.

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2. If the street and sidewalk improvements do not comply and are required, no building permit shall be issued unless:
 - a. The required street and sidewalk improvements are installed; or
 - b. An exemption has been granted under Section 12.04.040 of this Chapter; or
 - c. The applicant has obtained a Right of Way permit for the required street, and/or sidewalk improvements under Section 1.04.120 of this Chapter; or
 - d. The City and applicant have executed an agreement stating that the required street and sidewalk improvements shall be installed prior to final inspection and/or the issuance of a certificate of occupancy; or
 - e. The city and property owner have executed and recorded in the Marion County Deed Records an agreement stating that any of the required improvements are deferred in accordance with Section 12.04.080 of this chapter; or
 - f. A waiver has been granted by the City in accordance with Section 12.04.080 of this chapter. (Ord. 940, January 2012: prior code section 4.040) (Ord. 646, section 1[part], 1988: prior code section 4.318)

12.04.070 WAIVER OR MODIFICATION OF REQUIRED STREET RIGHT-OF-WAY DEDICATION.

1. Any applicant for a building permit may file a written request that the City modify the street dedication width or grant a waiver to the street right-of-way dedication requirements that are specified in the City's Standard Specifications or the Stayton Transportation System Plan. (Ord. 940, January 2012)
2. The following items do not normally constitute unusual circumstances which warrant granting a modification or waiver of street right-of-way dedication requirements:
 - a. Financial hardship of the applicant and/or property owner.
 - b. Other properties on the street have not dedicated additional right-of-way.
 - c. The City did not require a right-of-way dedication for the property when the City issued a prior building permit or granted a development approval or land division approval. (Ord. 940, January 2012)

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3. Upon review of a written request for modification or waiver, the Public Works Director may either: (1) deny the request, (2) modify the street dedication width or (3) grant a waiver of the required street dedication. The Public Works Director may modify the street dedication requirement or grant a waiver if the Public Works Director finds any of the following circumstances exist:
 - a. The Stayton Transportation System Plan shows the additional right-of-way is not needed.
 - b. The City has adopted a refinement plan that shows the future right-of-way width for the street shall be less than the requirements in the City's Standard Specification or in the Stayton Transportation System Plan.
 - c. The required right-of-way dedication requirement is not roughly proportional to the site specific impacts of the proposed development.
 - d. Unusual circumstances or peculiarities of the site exist which, in the opinion of the Public Works Director, warrant a modification or waiver of the street dedication requirement.
4. Notice of Decision: The Public Works Director shall provide the applicant with a written notice of the decision. A copy of the decision shall be provided to the City Council. The decision shall become final fourteen (14) days after the written Notice of Decision is mailed, unless the decision is appealed to the City Council pursuant to Section 12.04.090 of this Chapter.

12.04.080 WAIVER OR DEFERRAL OF REQUIRED STREET IMPROVEMENTS

1. Any applicant for a building permit may file a written request that the City grant either a waiver exempting the applicant's property from the required street and/or sidewalk improvement requirements or defer the construction of the required improvements. (Ord. 940, January 2012: prior code section 4.060)
2. The following items do not normally constitute unusual circumstances which warrant granting of a deferral or waiver of street and/or sidewalk improvement requirements:
 - a. Financial hardship of the applicant and/or property owner.
 - b. Lack of street improvements or sidewalks on adjacent properties.
 - c. Cost of the improvement.

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- d. The City did not require the street or sidewalk improvement(s) for the property when the City issued a prior building permit or granted a development approval or land division approval.
3. Upon review of a written request for deferral or waiver, the Public Works Director may either: (1) deny the request, or (2) grant a deferral of any or all of the required improvements or (3) grant a waiver of any or all of the required improvements. The Public Works Director may defer the street and/or sidewalk improvement or grant a waiver if the Public Works Director finds that:
 - a. Street widening or street corridor improvements are planned within five (5) years and the exact design or width of the future street has not yet been determined.
 - b. Physical obstructions including steep banks or drainage channels exist on the site which would require extensive public or private improvements in addition to the street or sidewalk construction.
 - c. Public improvement projects are planned in the next five (5) years which would require the City to remove the street or sidewalk improvements.
 - d. The City has a public improvement project scheduled for construction in the immediate vicinity of the applicant's property. In lieu of applicant constructing the required improvements, the applicant may make a cash payment to the City based on the proportionate benefit of the public improvement to the property and the City agrees it shall install the required public improvement concurrently with the City's planned project.
 - e. The required street improvement requirement is not roughly proportional to the site specific impacts of the proposed development.
 - f. Unusual circumstances or peculiarities of the site exist, which, in the opinion of the City, warrant a waiver or deferral of required street or sidewalk improvements.
 4. If the Public Works Director grants a deferral of the street or sidewalk improvement, the property owner shall execute and file an agreement with the City which:
 - a. Describes the improvements that have been deferred; and
 - b. States the period of time within which the required improvements shall be installed; and,

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- c. States the agreement is terminated upon installation of all required street and sidewalk improvements; and
 - d. States that if the improvements are not installed by the applicant, the property owner shall participate in a Local Improvement District in accordance with this Chapter; and
 - e. States the property owner waives the right to remonstrate against any Local Improvement District initiated to install the required street and sidewalk improvements.
 - f. Upon execution of the agreement by both parties, the agreement will be recorded by the City in the Marion County Deed Records. After recording of the deferral agreement, the building permit may be issued when all other requirements are met. The deferral of any street or sidewalk improvement applies only to the specific building permit application. The deferral is not transferable or applicable to any future building permit, development or land division application. (Ord. 646, section 1[part], 1988: prior code section 4.322) (Ord. 940, January 2012)
5. If the Public Works Director grants a waiver of any or all of the street or sidewalk improvements, the building permit may be issued when all other requirements are met. The waiver of any street or sidewalk improvement applies only to the specific building permit application. The waiver is not transferable or applicable to any future building permit, development or land division application.
 6. Notice of Decision. The Public Works Director shall provide the applicant with written notice of the Public Works Director's decision to defer the installation of public improvements or to waive the public improvement requirements. The decision shall become final fourteen (14) days after the date the written Notice of Decision is mailed, unless the decision is appealed to the City Council pursuant to Section 12.04.090. (Ord. 940, January 2012: prior code section 4.040)

12.04.090 CITY COUNCIL REVIEW AND APPEALS

1. Appeal to City Council. The Public Works Director's decision to approve, deny, modify or waive the street right-of-way dedication requirements under Section 12.04.070 or to approve or deny a deferral or waiver of street improvement requirements under Section 12.04.080 may be appealed by an affected party to the City Council within fourteen (14) days of the mailing of the Notice of Decision. The appeal shall be in writing and shall

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clearly state the issue being appealed and the grounds for the appeal. The City Council shall consider the appeal at a regularly scheduled meeting, no later than 45 days from the date of the City's receipt of the appeal. The City Council may, at its discretion, (1) remand the issue back to the Public Works Director for reconsideration, (2) grant the request on appeal, with or without conditions or (3) deny the request on appeal based on the record.

2. Council Decision Final. The decision of the City Council is final. 12.04.090 (Ord. 940, January 2012)

12.04.100 STREET SPECIFICATIONS

1. Before any street improvement is made under the provisions of this chapter, the Applicant or the property owner's representative shall submit design plans to the City for review and approval.
2. The person responsible for constructing any street in accordance with this Chapter shall conform to the City's Standard Specifications. (Ord. 940, January 2012; prior code section 4.070)

12.04.110 EXTENT OF IMPROVEMENTS

1. If a single improvement is to be constructed on a new street and the improvement also owns the property on the opposite side of the street, the owner shall improve the street for its entire width and extending at least the total frontage of the lot to be improved. (Ord. 940, January 2012; prior code section 4.080)
2. If the opposite side of the street of a lot to be improved is in different ownership, the street improvement shall be $\frac{3}{4}$ street improvement as defined in the City's Standard Specifications. (Ord. 646, section 1[part], 1988; prior code section 4.330)

12.04.120 RIGHT-OF-WAY PERMIT: REQUIRED

1. The following is a list of right-of-way permits which may be issued by the City for use of a public right-of-way:
 - a. **Right-of-Way Construction Permit:** This permit covers the construction of streets, alleys, sidewalks, driveway approaches, curbs and other improvements within the City of Stayton public rights-of-way and/or easements. This permit also covers the cutting and excavation of streets or alleys and construction of all subsurface utilities within the City of Stayton public rights-of-way and/or

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easements.

- b. **Right-of-Way Encroachment Permit:** This permit covers the long term use of public rights-of-way and/or easements to construct or maintain a structure encroaching upon such public rights-of-way and/or easements. An encroachment structure shall include any tower, pole, pole line, deck, billboard, stand or building, landscaping, parking, or any other such object or structure that is placed in, upon, under or over any public street or alley right of way, or other public property.
 - c. **Right-of-Way Closure Permit:** This permit covers the temporary closure of sidewalks, streets, traffic and bicycle lanes, alleys, parking spaces, paths, and any other pedestrian and/or vehicular access within the City of Stayton public right-of-way and/or easements. A right-of-way closure permit may be issued as part of a Right-of-Way Construction Permit or may be issued by the Stayton Police Department in compliance SMC Chapter 10.36. Closures on state highways or county roads may require additional permits from ODOT or Marion County. (Ord. 940, January 2012: prior code section 4.090)
2. Any person desiring to (1) construct, repair or replace a surface or subsurface public improvement or utility in a public right-of-way, (2) construct or maintain a structure encroaching into the public right-of-way, and/or (3) temporarily close a right-of-way or easement shall obtain a permit from the City. (Ord. 940, January 2012)
 3. The permit application shall describe the location of the proposed improvements, include design plans for the proposed public improvements, and contain a statement that the person constructing the improvements shall comply with the requirements of this Chapter, any applicable provisions of the City's Standard Specifications and the general terms and conditions of listed on the permit.
 4. If the Public Works Director, or designee, is satisfied that all applicable requirements are met, a permit to build, improve or repair the street or sidewalk shall be issued to the permittee. (Ord 746, ' 3, June 1995) (Ord. 940, January 2012)
 5. The permittee shall notify the Oregon Utility Notification Center and obtain required utility locates prior to beginning work.

12.04.130 RIGHT-OF-WAY PERMIT: CHARGES

1. The City Council may establish application and inspection fees for permits by resolution.

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2. The application fee for a permit shall be doubled if the start of construction or use of the right-of-way occurs prior to the issuance of the permit. (Ord. 746, '4, June 1995) (Ord. 940, January 2012: prior code section 4.091)

12.04.140 RIGHT-OF-WAY PERMIT: CHARGES FOR EARLY EXCAVATION

1. To conserve new paving and resurfacing of streets, pavement cuts in travel lanes are prohibited for one (1) year after final approval of pavement placement, except when a contractor places new pavement along the full length of the cut, plus 10 feet at both ends of the cut, and across the full width of the street.

After the one (1) year moratorium pavement may only be cut upon payment of a penalty charge. The maximum period of time for which such penalty shall apply shall be five years.

- a. The charge for early excavation of any public facility shall be a specified cost per square foot of excavation (length x width = square foot of excavation) multiplied by the number of years remaining in the penalty period. The specified cost per square foot shall be set by resolution.

First year after surfacing:	As Stated Above.
Second year after surfacing:	Cost x square footage of excavation x 4
Third year after surfacing:	Cost x square footage of excavation x 3
Fourth year after surfacing:	Cost x square footage of excavation x 2
Fifth year after surfacing:	Cost x square footage of the excavation

- b. The City will inform utilities and affected property owners before new paving or resurfacing is performed. Whenever practicable, the City will provide a tentative list of street improvements six months prior to construction.
- c. Potholing smaller than four square yards shall be allowed outside the travel lanes without penalty. (Ord. 746, section 5, June 1995; Ord. 874, section 43, 2004) (Ord. 940, January 2012: prior code section 4.092) (Ord. 981, May 2015)

12.04.150 RIGHT-OF-WAY PERMIT: INSURANCE, BONDING AND WARRANTY REQUIRED

1. The permittee shall comply with the insurance, bonding and warranty requirements specified in the City's Standard Specifications.
2. Utility companies which have a franchise for service in the City of Stayton and have a written franchise agreement with the City shall be exempt from meeting the

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insurance and bonding requirements for each right-of-way permit.¹ (Ord. 940, January 2012: prior code section 4.093)

12.04.160 RIGHT-OF-WAY PERMIT: MAINTENANCE

1. Patches or excavations within the public right-of-way in need of maintenance shall be reported to the Public Works Director. In most cases, a utility cut requires maintenance or repair if any part of the replacement surfacing deviates more than one-half inch from the finished surface street grade or one-quarter inch from a finished sidewalk grade.
2. If, upon reasonable notice, the permittee fails to restore and maintain the right-of-way affected by the permittee's work, the City may perform the work and charge the cost to the permittee.
3. If, in the judgment of the Public Works Director, a hazardous or dangerous condition exists that affects the public health, safety and welfare, the City may take necessary corrective action to remove the hazardous conditions without prior notification to the permittee and charge the cost thereof to the responsible party.
4. Nothing in this Chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for making emergency repairs to a public or private utility within the public right-of-way, provided that the person making such excavation shall apply for right-of-way permit on the first working day after such work is commenced. Emergency excavation does not release the permittee from any obligation or any penalties or regulations that would normally apply. (Ord. 940, January 2012: prior code section 4.094)

12.04.170 RIGHT-OF-WAY PERMIT: COMPLIANCE WITH STANDARD SPECIFICATIONS

Work done under a right-of-way construction permit must (1) meet or exceed the requirements of the Standard Specifications for public works design and construction in the City of Stayton as provided in SMC Chapter 12.08 that are in effect at the time the permit is issued and (2) comply with all other public works conditions required by SMC Title 12. (Ord. 746, Section 8, June 1995) (Ord. 940, January 2012: prior code section 4.095)

¹ Utility companies include PacifiCorp, Northwest Natural Gas, Stayton Cooperative Telephone Company, WAVE Broadband or similar utility or telecommunication corporations.

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12.04.180 RIGHT-OF-WAY PERMIT: CLEAN-UP REQUIRED

As the excavation work progresses, the affected area of the public right-of-way shall be kept thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed as directed by the City, and in any event immediately after completion of the work. If the permittee fails to comply with clean up requirements of SMC Title 12, either within 24 hours of the completion of the project or as directed by the City, then the City may cause the clean-up work to be completed and the costs will be charged to the permittee. (Ord. 746, Section 9, June 1995) (Ord. 940, January 2012: prior code section 4.096)

12.04.190 CURB AND SIDEWALK CONSTRUCTION: INITIATION BY RESOLUTION

1. Whenever the City Council determines that any new curb and/or sidewalk shall be constructed within the City, it shall enact a resolution to that effect, describing the location, the work to be completed and the time within which the work shall be completed.
2. The City Council shall allow a minimum of sixty (60) days for the benefitting property owners to complete the construction of the curb and/or sidewalk.
3. The resolution shall state whether the curbs and/or sidewalks are to be constructed at the expense of the benefitting property owners or at the expense of the City. (Ord. 746, Section 1 (part), 1988; prior code section 4.340) (Ord. 940, January 2012: prior code section 4.100)

12.04.200 CONSTRUCTION BY PROPERTY OWNERS

If any curb and/or sidewalk is to be constructed at the expense of the benefitting property owner(s), a notice containing the substance of the resolution required in Section 12.04.190 shall be sent by regular and/or certified mail to the owner(s) of record of any benefitting parcel(s) of property. Such mailing is deemed equivalent to personal service. (Ord. 646, section 1 (part), 1988: prior code section 4.345) (Ord. 940, January 2012: prior code section 4.110)

12.04.210 CREATION OF LOCAL IMPROVEMENT DISTRICT

If the improvement of the street or sidewalk along any one lot or area would be impractical in the City's judgment and additional street area should be included in the improvement, the City Council may create a local improvement district and assess the benefitting property owner(s) for the work done. The assessment shall be imposed in compliance with either Section 12.04.220

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through 12.04.240 of this Chapter, SMC Chapter 3.08 “Advanced Financing of Public Improvements” and SMC Chapter 12.12 “Public Improvements”. (Ord. 646, section 1 (part), 1988; Ord. 535, 1980: prior code section 4.333) (Ord. 940, January 2012: prior code section 4.120)

12.04.220 CONSTRUCTION BY CITY: ADVERTISEMENT FOR BIDS

1. If any property owner fails to construct any street or sidewalk in compliance with all applicable provisions of this Chapter, the City may advertise for bids for the construction of such street or sidewalk and may enter into a contract with the selected responsible bidder to accomplish the task.
2. In lieu of subsection 1 of this Section, the City Council may direct the work to be done by the City. (Ord. 646, section 1 (part), 1988; prior code section 4.350) (Ord. 940, January 2012: prior code section 4.130)

12.04.230 CONSTRUCTION BY CITY: ASSESSMENTS

Upon completion of any work in accordance with Section 12.04.220 of this Chapter, the City Council shall assess upon each benefitting parcel of land its proportionate share of the cost of the work, which may include construction, engineering, legal, bonding, interest and administrative costs. (Ord. 646, section 1 (part), 1988; prior code section 4.352) (Ord. 940, January 2012: prior code section 4.140)

12.04.240 CONSTRUCTION BY CITY: LIEN AGAINST PROPERTY

1. Where the City has constructed or repaired any street or sidewalk in compliance with Section 12.04.220 of this Chapter, each benefitting parcel of land shall be liable for the full amount assessed against the property.
2. Any expenses incurred by the City in accordance with Subsection 1. of this Section shall be billed to the affected property owner with payment due within thirty (30) days of the mailing date.
3. If the assessment is not paid in full within thirty (30) days of the mailing date, the Finance Director may make monthly, quarterly or other payment arrangements with the property owner.
4. In addition to Section 3 above, if the assessment is not paid within thirty (30) days after notice thereof is provided by mail to the affected property owner, the City may proceed to enter an assessment lien against the property, in the amount of the assessment, plus

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any legal, bonding, interest and administrative costs, to be collected and enforced as other City liens. (Ord. 646, section 1 (part), 1988; prior code section 4.360) (Ord. 940, January 2012: prior code section 4.150)

12.04.250 MAINTENANCE OF STREETS

1. The State of Oregon Department of Transportation and Marion County are responsible for maintenance of streets under their ownership and jurisdiction.
2. The City of Stayton is responsible for maintenance of streets under the City's jurisdiction. The City sets the following priorities for use of its financial resources for street maintenance:
 - a. Arterial streets.
 - b. Collector streets.
 - c. Local streets with full-width curb-to-curb improvements.
 - d. Sidewalks, Pedestrian Path, Trails and Bikeways.
 - e. ADA Ramps and accessible facilities.
 - f. Local streets with partial-width improvements. [*e.g. streets with an AC or paved center travel lane, gravel/grass shoulders, with or without curbs.*]
 - g. Gravel streets.

No new street shall be accepted by the City for maintenance until such street is brought up to the standards required by this Title. "New Street" includes either (1) a street created as part of a land division or development approved per Title 17, or (2) a right-of-way granted to the City and intended for street use, or (3) a platted but unopened or unimproved street within the City. (Ord. 646, section 1 (part), 1988; prior code section 4.360) (Ord. 940, January 2012: prior code section 4.160)

12.04.260 MAINTENANCE OF CURBS, SIDEWALKS, STREET TREES AND LANDSCAPE STRIP BY PROPERTY OWNER

1. Each property owner is responsible for maintenance of the curb, sidewalk and landscape strip, including street trees, abutting the owner's property. The curb, sidewalk and landscape strip shall be kept clean and in good repair.
2. If any curb, sidewalk, street tree or landscape strip between the curb and the property line becomes unsafe, out of repair, and/or poses an unreasonable risk of danger to person or property, the Public Works Director will notify the affected property owner to repair,

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maintain or clean the curb, sidewalk, street tree or landscape strip as conditions may require.

3. A sidewalk and/or curb shall be deemed to present an unreasonable risk of danger to person or property if:
 - a. Panels or pieces are gap-separated more than one-half inch from adjacent panels or pieces; or,
 - b. Panels or pieces are vertically displaced from each other more than one-quarter inch; or,
 - c. Entire pieces or panels are absent; or,
 - d. Panels or pieces are broken into parts smaller than one square foot; or,
 - e. The grade from one piece or panel to the adjacent piece changes by more than one-half inch per foot in any direction; or,
 - f. Handicap access ramps or driveways deviate from the slopes and dimensions included in the City's Standard Specifications; or,
 - g. Curb pieces exist less than two feet in length; or,
 - h. Monolithic curb and gutter sections are cracked or broken longitudinally, or displaced one-half inch or more from the adjacent paving; or,
 - i. The surface irregularities are generally more than one-half inch from the original surface; or,
 - j. Trip hazards, obstructions or other conditions exist which prevent safe use of the sidewalk, handicap access ramp or curb; or,
 - k. Any other damage deemed to present an unreasonable risk of danger to person or property as determined at the sole discretion of the Public Works Director.

4. The existence of sidewalks and/or curbs in such condition as to present an unreasonable risk of danger to persons or property hereby is declared to be a public nuisance and may be abated by the City as set forth in Section 12.04.270 of this Chapter.

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5. Each property owner shall be liable for the full cost of the repair, maintenance or cleaning of any curb, sidewalk, street tree or landscape strip adjacent to or abutting the property.
6. When damage to a curb or sidewalk is attributed to a heritage tree as designated by the City according to SMC 17.20.970 Section 3, the repair to the curb and/or sidewalk shall be done in such a way as to not inflict damage to the tree. The property owner may approach the City for financial and/or design assistance when repair to curbs and sidewalks is necessary around heritage trees. (Ord. 798, May 1999) (Ord. 940, January 2012: prior code section 4.170)

12.04.270 MAINTENANCE OF CURBS AND SIDEWALKS: ABATEMENT PROCEDURES, NOTICES AND APPEALS

1. Notice to Property Owner. Whenever, in the judgment of the Public Works Director or designee, it is necessary that an existing sidewalk, curb, landscape strip, and trees be reconstructed or repaired, written notice will be mailed to the property owner. The notice shall include:
 - a. A description of the problem or violation and the reconstruction or repairs that are required; and,
 - b. A description of any interim safety measures, warning devices and/or barricades that are needed to protect the public until such time as the curb or sidewalk is reconstructed or repaired or the hazardous condition is removed; and,
 - c. A description of the location where the problem exists in sufficient detail to easily identify the location of the reconstruction or repair. The notice shall be sufficient if it specifies at least the street and address of the property; and,
 - d. A date when the reconstruction or repair must be completed, but not less than 30 days from the date of the written notice; and,
 - e. A statement that the property owner must obtain a right-of-way permit from the City prior to undertaking the reconstruction or repair; and,

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- f. A statement that the property owner may file a written appeal to the City Administrator within 14 days of the date of the notice; and
- g. A statement that if the property owner fails to make such reconstruction or repair within the time limits in the notice, then the City may reconstruct or repair such curb, sidewalk, landscape strip and trees the City will bill the property owner for the actual costs for the reconstruction or repair, including inspection services, plus 10 percent to cover overhead and that if the bill is not paid, a lien may be placed on the property; and,

The notice may also include,

- h. A statement that in lieu of the property owner obtaining a permit and making the required repair, the property owner may, in writing, authorize the City to make the repairs and bill the property owner for the actual costs of the work; and/or,
2. The property owner shall either:
 - a. Within 30 days from date of the notice, obtain a permit to undertake reconstruction or repair; or,
 - b. File an appeal with the City Administrator within fourteen (14) days of the date of the notice.
 3. The property owner shall complete the reconstruction or repair described in the notice within the time period specified in the notice. The time period may be extended by the City considering limitation of weather and season, but not to exceed 120 days from the date of the notice.
 4. If the property owner either:
 - a. Fails to file an appeal with the City in a timely manner, or
 - b. Fails to obtain a right-of-way permit, or
 - c. Fails to complete the repairs or reconstruction with the time specified by the notice, or
 - d. Fails to comply with the direction of the City following an appeal,

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then the property owner shall be deemed to have waived his or her rights and the City may proceed to make repairs in accordance with Section 12.04.280 of this Chapter.

5. Appeals

- a. Appeal to City Administrator. Any person who, by the notice prescribed in this Section, is directed to reconstruct or repair a curb and/or sidewalk may file a written appeal to the City Administrator within fourteen (14) days of the date the notice was mailed. The written appeal shall state one or more of the following grounds for the appeal:
 - i. That the alleged defect is not in violation of the standards adopted under this Chapter;
 - ii. That the alleged defect is not hazardous, in fact, because of special conditions in the particular case;
 - iii. That the compliance period is unreasonable;
 - iv. That an extension of the compliance period was unreasonably denied;
 - v. That safety measures specified in the notice are unreasonable; or
 - vi. That the person to whom notice has been given is not the owner of the property adjacent to the curb or sidewalk.
- b. City Administrator's Decision on the Appeal. The City Administrator shall consider the appeal within 15 days from the date of the City's receipt of the appeal. The City Administrator may, at the City Administrator's sole discretion, (1) remand the issue back to the Public Works Director for reconsideration, (2) grant the request on appeal, with or without conditions or (3) deny the request on appeal. The City Administrator's decision may be appealed, in writing, to the City Council.
- c. Appeal to City Council. The City Administrator's decision to approve or deny an appeal regarding the reconstruction or repair of a sidewalk or curb under Section 12.04.270 may be appealed by the Property Owner to the City Council within fourteen (14) days of the mailing of the Notice of Decision. The appeal shall be in writing and shall clearly state the issue being appealed and the grounds for the

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appeal. The City Council shall consider the appeal at a regularly scheduled meeting, no later than 45 days from the date of the City's receipt of the appeal. The Mayor may invite testimony, at the Mayor's discretion. The City Council may, at its discretion, (1) remand the issue back to the City Administrator for reconsideration, (2) grant the request on appeal, with or without conditions or (3) deny the request on appeal based on the record. The City Council's decision is final. (Ord. 646, section 1 (part), 1988; prior code section 4.363) (Ord. 940, January 2012: prior code section 4.180)

12.04.280 MAINTENANCE BY CITY AND BILLING TO PROPERTY OWNER

1. If a property owner signs a written authorization granting the City permission to make required curb and sidewalk repairs and then bill the property owner and the City elects to make the repairs, the City will estimate the costs of the reconstruction or repair, notify the property owner of the estimated costs and obtain authorization to proceed.
2. Upon the refusal or neglect of any property owner to undertake necessary cleaning, reconstruction or repair after notice to do so by the City, the City may pursue appropriate legal remedies or the City may, if budgeted funds are available, proceed to clean, reconstruct or repair a curb, sidewalk, street tree and/or landscape strip.
3. Any expenses incurred for reconstruction or repair by the City in accordance with Subsections 1 or 2 of this Section shall be billed to the affected property owner. The billed expense may include the actual costs for the reconstruction or repair, including inspection services, plus 10 percent to cover overhead
4. If the billed expense is not paid in full within thirty (30) days of the mailing date, the City may make monthly, quarterly or other payment arrangements with the property owner.
5. In addition to Section 4 above, if the billed expense is not paid within thirty (30) days after notice thereof is provided by mail to the affected property owner, the City may proceed to enter an assessment lien against the property, in the amount of the billed expense, plus any legal, bonding, interest and administrative costs, to be collected and enforced as other City liens. (Ord. 646, section 1 (part), 1988; prior code section 4.363) (Ord. 940, January 2012: prior code section 4.180)

12.04.290 LIABILITY OF PROPERTY OWNERS

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1. The owners of property adjacent to or abutting any curb, sidewalk and/or landscape strip shall be liable for all personal or property damages which result from their fault or negligence in failing to keep any such curb, sidewalk, street tree and/or landscape strip in clean and in good repair.
2. The property owner shall be responsible to repair and correct defects in the curb, sidewalks, and/or landscape strip and shall be liable for any injuries/damages incurred by third parties as a result thereof, regardless of whether or not City has provided notice to property owner. (Ord. 646, section 1 (part), 1988; prior code section 4.365) (Ord. 940, January 2012: prior code section 4.190)

12.04.300 WORK ON EXISTING STREETS, SIDEWALKS AND CURBS

1. Nothing in this Chapter shall be construed to require that curb lines be altered on streets where such curb lines have been permanently improved at the expense of the adjacent or abutting property, unless by special order from the Public Works Director.
2. On any side of any street on which concrete sidewalks already exist, the pattern established by the location of existing sidewalks in relation to the curb and the owner's property line shall determine the location for all sidewalks on that side of the street, notwithstanding the provisions of this Chapter or the City's Standard Specifications.
3. No deviation from an established sidewalk pattern shall be made without approval of the Public Works Director. (Ord. 646, section 1 (part), 1988; prior code section 4.380) (Ord. 940, January 2012: prior code section 4.200)

12.04.310 ACCEPTANCE OF STREETS AND SIDEWALKS

Upon completion of any street improvement or street repair, or any portion thereof, and prior to acceptance of the work, the Public Works Director shall determine that the new construction or street repair meets City's Standard Specifications, that the regulations have been met, and that all permit and inspection fees have been paid. The City will accept the work and the initiate the warranty period in accordance with the City's Standard Specifications.² (Ord. 646, section 1 (part), 1988; prior code section 4.380) (Ord. 940, January 2012: prior code section 4.210)

² See City of Stayton Public Works Construction Specifications, Section 1.02.10 to 1.02.12 and 1.08.21, for completion and warranty requirements.

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12.04.320 TO 12.04.380 RESERVED FOR EXPANSION

12.04.390 VIOLATION: PENALTY

1. Any person who violates any provision of this Chapter is punishable upon conviction by a fine as provided in subsection 2 of this section. This penalty may be assessed against the property owner and/or permittee. Each day that the violation persists after notification shall be deemed as a separate offense.
2. A violation of this Chapter shall be punishable as an infraction by a fine not less than \$500.00 or more than \$1,000.00 for each infraction. (Ord. 646, section 1 (part), 1988; prior code section 4.995) (Ord. 940, January 2012: prior code section 4.290)