

NOTICE OF PUBLIC MEETING  
CITY OF ALBANY  
CITY COUNCIL WORK SESSION  
Municipal Court Room  
333 Broadalbin Street SW  
Monday, November 7, 2016  
4:00 p.m.



OUR MISSION IS

*"Providing quality public services  
for a better Albany community."*

OUR VISION IS

*"A vital and diversified community  
that promotes a high quality of life,  
great neighborhoods, balanced  
economic growth, and quality public  
services."*

AGENDA

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting.

4:00 p.m. CALL TO ORDER

4:00 p.m. ROLL CALL

4:05 p.m. BUSINESS FROM THE PUBLIC

4:10 p.m. RISK MANAGEMENT, FINANCIAL, AND INVESTMENT POLICIES – Steve Uerlings and Sally Walton.  
[Pages 2-27]  
*Action Requested: Information, discussion, and direction.*

4:30 p.m. QUEEN AVENUE RAIL CROSSING – Ron Irish. [Pages 28-33]  
*Action Requested: Information, discussion, and direction.*

5:00 p.m. ALBANY MUNICIPAL CODE CHANGES AND AMENDMENTS – Kris Schendel. [Pages 34-64]  
*Action Requested: Discussion for decision at the November 9, 2016, City Council meeting.*

5:35 p.m. BUSINESS FROM THE COUNCIL

5:45 p.m. CITY MANAGER REPORT  
➤ Broadway Street drainage update – Wes Hare. [Verbal]  
➤ IGA with Adair Village for website updates – Jorge Salinas. [Verbal]

6:00 p.m. ADJOURNMENT

City of Albany Web site: [www.cityofalbany.net](http://www.cityofalbany.net)

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*The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, advanced notice is requested by notifying the City Manager's Office at 541-917-7508, 541-704-2307, or 541-917-7519.*

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TO: Albany City Council  
VIA: Wes Hare, City Manager  
FROM: Stewart Taylor, Finance Director   
DATE: November 2, 2016, for the November 7, 2016, City Council Work Session  
SUBJECT: Investment Policy and Market Update  
RELATES TO STRATEGIC PLAN THEME: ● Effective Government

Action Requested:

Receive a market update from the City's investment adviser and discuss the current Investment Policy. The City Council will consider readopting the policy at its regular meeting on Wednesday, November 9, 2016.

Discussion:

The City's investment policy was last reviewed and adopted by the City Council as Resolution number 6459 on October 28, 2015. Both the policy and ORS Section 294.135(a) require the City Council to review the policy on a periodic basis.

Staff has worked closely with the City's Investment Advisor, Government Portfolio Advisors, to review the current policy and to manage the City's investments consistent with the policy.

The most notable change to the policy is to add the Oregon Intermediate Pool to allowable investments. The state is providing the ability for local governments to invest in the intermediate pool managed by Western Asset Management. The fund will have a 3-4 year average maturity, will trade at variable NAV, and can invest out to 10 years. The intent is to add the option of the pool fund but not invest in it until interest rates are higher.

Budget Impact:

The Investment Policy sets parameters for the investment of available cash not needed to meet current obligations.

ST:md

Attachments: Memo from Government Portfolio Advisors  
Investment Policy



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## Memorandum

**To:** Stewart Taylor, Finance Director

**From:** Deanne Woodring, CFA – President Government Portfolio Advisors

**Date:** 9/1/16

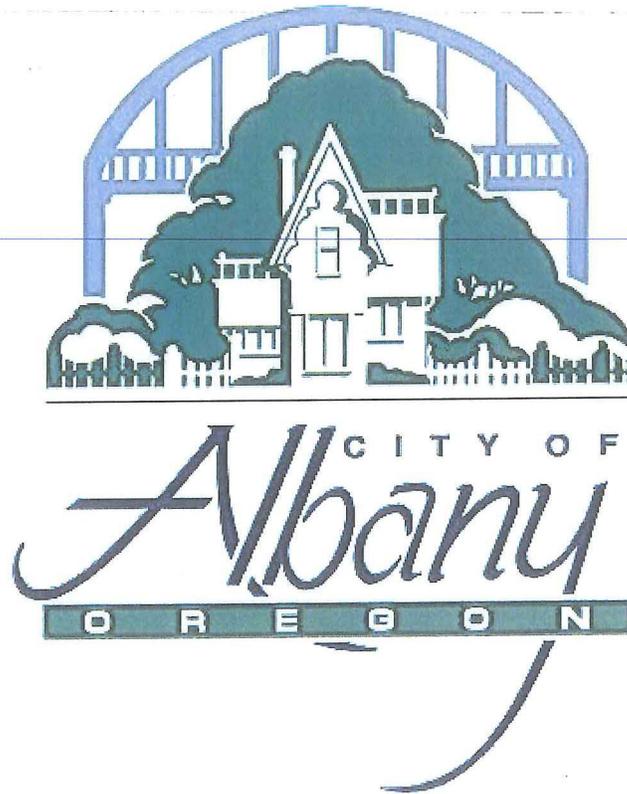
**Subject:** Investment Policy Review 2016

ORS 294.135(a) requires local governments investing in securities with maturities longer than 18 months to annually adopt their investment policies. The City re-adopted the Investment Policy in October, 2015. The policy is being presented for re-adoption for 2016 to the City Council with no substantial changes and the following revisions:

GPA made certain formatting changes to provide for clarity and consistency in the document.

- 1) GPA is recommending to separate the Certificates of Deposit allocation and the Bank Deposit allocation line items. Recommending that Certificates of deposit are limited to 10% and 5% per issuer and Bank Deposits to 20% and 10% issuer constraint. Separating will provide for clarity in reporting the types of securities.
- 2) GPA is recommending to combine the Suitable Investments table and the Diversification table into one table to more clearly describe allowable securities and tie to the compliance report.
- 3) Constrain the percentage of Callable agency securities to 25% in the Total Portfolio Maturity Constraints table.
- 4) Change the minimum rating on Commercial paper to A1+/P1.
- 5) Banker's Acceptances – Confine credit ratings limits to S&P and Moody's. Remove Fitch.
- 6) Add Oregon Intermediate Pool to allowable investments. The state is providing the ability for local governments to invest in an intermediate pool that is managed by Western Asset Management. This fund will have a 3-4 year average maturity, will trade at a variable NAV and can invest out to 10 years. The fee on the fund is 15-20 basis points. GPA is recommending to add in policy but will likely not recommend to invest until interest rates are higher.

# City of Albany Investment Policy



	<p>City of Albany Finance Policy Policy #: F-06-08-009 Title: Investment Policy</p>	
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## **I. INTRODUCTION**

The City of Albany, (hereinafter referred to as "Albany" or "City") was founded in 1848. Albany is the eleventh largest city in the state of Oregon, and is the county seat of Linn County. Albany has a home rule charter and is a Council-Manager form of government where the full time appointed City Manager administers the day-to-day operations and is the chief administrative officer of the City.

The average monthly balance of funds invested in the City's general portfolio, excluding proceeds from bond issues, is approximately \$60,000,000.00. The highest balances occur when taxes are collected.

## **II. GOVERNING BODY**

It is the policy of the City of Albany that the administration of its funds and the investment of those funds shall be handled with the highest public trust. Investments shall be made in a manner that will assure security of principal. Parameters will be set to limit maturities and increase diversification of the portfolio while meeting the daily cash flow needs of the City and conforming to all applicable state and City requirements governing the investment of public funds. The receipt of a market rate of return will be secondary to safety and liquidity requirements. It is the intent of the City to be in complete compliance with local, state, and federal law. The earnings from investments will be used in a manner that best serves the public trust and interests of the City.

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## **III. SCOPE**

This policy applies to activities of the City of Albany with regard to investing the financial assets of all funds. Funds held by trustees or fiscal agents are excluded from these rules; however, all funds are subject to regulations established by the state of Oregon.

The City commingles its daily cash into one pooled investment fund for investment purposes of efficiency and maximum investment opportunity. The following funds, and any new funds created by the City, unless specifically exempted by the City Council and this policy, are defined in the City's Comprehensive Annual Financial Report:

- General Fund
- Special Revenue Funds
- Debt Service Funds
- Capital Projects Funds
- Enterprise Funds
- Internal Service Funds
- Permanent Funds

These funds will be invested in compliance with the provisions of all applicable Oregon Revised Statutes (ORS). Investments of any tax-exempt borrowing proceeds and any related Debt Service funds will comply with the arbitrage restrictions in all applicable Internal Revenue Codes.

## **IV. OBJECTIVES AND STRATEGY**

It is the policy of the City that all funds shall be managed and invested with three primary objectives, listed in the following order of priority:

### **1. Safety of Principal**

- Safety of principal is the foremost objective of the City. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- Diversification of the portfolio will include diversification by maturity and market sector and will include the use of multiple broker/dealers for diversification and market coverage.

### **2. Liquidity**

The City's investment portfolio will remain sufficiently liquid to enable it to meet all operating requirements that might be reasonably anticipated.

### **3. Yield-Return**

The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the City's risk constraints and the cash flow of the portfolio. "Market rate of return" may be defined as the average yield of the current three-month U.S. Treasury bill or any other index that most closely matches the average maturity of the portfolio.

Effective cash management is recognized as essential to good fiscal management. Cash management is defined as the process of managing monies in order to ensure maximum cash availability. The City shall maintain a comprehensive cash management program that includes collection of accounts receivable, prudent investment of its available cash, disbursement of payments in accordance with invoice terms, and the management of banking services.

## **V. STANDARDS OF CARE**

### **1. Delegation of Investment Authority**

- a. Investment Officer. The Finance Director, acting on behalf of the City Council, is designated as the Investment Officer of the City and is responsible for investment management decisions and activities. The Council is responsible for considering the quality and capability of investment advisers and consultants involved in investment management and procedures. All participants in the investment process shall seek to act responsibly as custodians of the public trust.

The Investment Officer and those delegated investment authority under this policy, when acting in accordance with the written procedures and this policy, and in accord with the Prudent Person Rule, shall be relieved of personal responsibility and liability in the management of the portfolio.

- b. Investment Adviser. The City may enter into contracts with external investment management firms on a non-discretionary basis.

If an investment adviser is hired, the adviser will serve as a fiduciary for the City and comply with all requirements of this Investment Policy. Exceptions to the Investment Policy must be disclosed and agreed upon in writing by both parties. The Investment Officer remains the person ultimately responsible for the prudent management of the portfolio.

- c. **Staff Designation.** The Investment Officer shall designate a staff person as a liaison/deputy in the event circumstances require timely action and the Investment Officer is not available.

## **2. Prudence**

The standard of prudence to be used in the investment function shall be the "prudent person" standard and shall be applied in the context of managing the overall portfolio. This standard states:

*"Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the expected income to be derived."*

## **3. Ethics and Conflict of Interest**

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees, officers, and their families shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the City. Officers and employees shall, at all times, comply with the state of Oregon Government Ethics as set forth in ORS 244.

# **VI. AUTHORIZED FINANCIAL INSTITUTIONS**

## **1. Broker/Dealer Approval Process**

The Investment Officer shall maintain a list of all authorized brokers/dealers and financial institutions that are approved for investment purposes or investment dealings. Any firm is eligible to make an application to the City of Albany and upon due consideration and approval will be added to the list. Additions and deletions to the list will be made at the discretion of the Investment Officer.

At the request of the City of Albany, the firms performing investment services shall provide their most recent financial statements or Consolidated Report of Condition for review. Further, there should be in place, proof as to all the necessary credentials and licenses held by employees of the brokers/dealers who will have contact with the City of Albany as specified by, but not necessarily limited to the Financial Industry Regulatory Authority (FINRA), Securities and Exchange Commission (SEC), etc. The Investment Officer shall conduct an annual evaluation of each firm's credit worthiness to determine if it should remain on the list.

All dealers with whom the City transacts business will be provided a copy of this Investment Policy to ensure that they are familiar with the goals and objectives of the investment program.

If the City hires an investment adviser to provide investment management services, the adviser is authorized to transact with its direct dealer relationships on behalf of the City. A list of approved dealers must be submitted to the investment officer prior to transacting business. The investment officer can assign the responsibility of broker/dealer due diligence process to the Adviser, and all

licensing information on the counterparties will be maintained by the Adviser and available upon request.

## **2. Investment Adviser**

An Investment Adviser may be selected through a competitive RFP process and must meet the following criteria:

- a. The investment adviser firm must be registered with the Securities and Exchange Commission (SEC) or licensed by the state of Oregon if assets under management are less than \$100 million.
- b. All investment adviser firm representatives conducting investment transactions on behalf of the City must be registered representatives with FINRA.
- c. All investment adviser firm representatives conducting investment transactions on behalf of the City must be licensed by the state of Oregon. Factors to be considered when hiring an investment advisory firm may include, but are not limited to:
  - i. The firm's major business
  - ii. Ownership and organization of the firm
  - iii. The background and experience of key members of the firm, including the portfolio manager expected to be responsible for the City's account
  - iv. The size of the firm's asset base, and the portion of that base which would be made up by the City's portfolio if the firm were hired
  - v. Management fees
  - vi. Cost analysis of the adviser
  - vii. Performance of the investment advisory firm, net of all fees, versus the Local Government Investment Pool over a given period of time

## **3. Financial Bank Institutions**

All financial banks that provide bank deposits, certificates of deposits or any other deposit of the bank to the City must either be fully covered by the FDIC or the bank must be a participant of the Public Funds Collateralization Program (PFCP). ORS Chapter 295 governs the collateralization of Oregon public funds and provides the statutory requirements for the PFCP. Bank depositories are required to pledge collateral against any public fund deposits in excess of deposit insurance amounts. The PFCP provides additional protection for public funds in the event of a bank loss.

## **4. Competitive Transactions**

The Investment Officer will obtain telephone, faxed or emailed quotes before purchasing or selling an investment. The Investment Officer will select the quote which best satisfies the investment objectives of the investment portfolio within the parameters of this policy. The Investment Officer will maintain a written record of each bidding process including the name and prices offered by each participating financial institution.

The investment adviser must provide documentation of competitive pricing execution on each transaction. The adviser will retain documentation and provide upon request.

## **VII. Safekeeping and Custody, Controls**

### **1. Safekeeping and Custody Securities**

The laws of the state and prudent treasury management require that all purchased securities be bought on a delivery versus payment basis and be held in safekeeping by the City, an independent third-party financial institution, or the City's designated depository.

All safekeeping arrangements shall be designated by the Investment Officer and an agreement of the terms executed in writing. The approved broker/dealer or investment adviser shall provide the City with a confirmation ticket listing the specific instrument, issuer, coupon, maturity, CUSIP number, purchase or sale price, transaction date, and other pertinent information. The broker/dealer which executes the transaction on the City's behalf shall deliver all securities on a delivery versus payment method to the designated third party trustee at the direction of the Investment Officer.

**2. Safekeeping of Funds at Bank Depositories**

The City may hold bank deposits or certificates of deposits at banks qualified under ORS 295.

**3. Accounting Methods**

The City shall comply with all required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies including but not necessarily limited to, the Governmental Accounting Standards Board (GASB); the American Institute of Certified Public Accountants (AICPA); and the Financial Accounting Standards Board (FASB).

**4. Pooling of Funds**

Except for cash in certain restricted and special funds, the City will consolidate balances from all funds to maximize investment opportunities. Investment income will be allocated to the various funds based on their respective participation and in accordance with Generally Accepted Accounting Principles.

**5. Internal Controls**

The City will maintain a structure of internal controls sufficient to assure the safekeeping and security of all investments. All out of compliance situations under this policy will be corrected and brought into compliance as soon as prudently possible.

The Investment Officer shall develop and maintain written administrative procedures for the operation of the investment program that are consistent with this investment policy. Procedures will include reference to safekeeping, wire transfers, banking services contracts, and other investment-related activities.

The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials and staff. No officer or designee may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer and approved by the Council.

**VIII. AUTHORIZED AND SUITABLE INVESTMENTS**

**1. Authorized Investments**

All investments of the City shall be made in accordance with Oregon Revised Statutes: ORS 294.035 (Investment of surplus funds of political subdivisions; approved investments), ORS

294.040 (Restriction on investments under ORS 294.035), ORS 294.052 (Definitions; investment by municipality of proceeds of bonds), ORS 294.135 (Investment maturity dates), ORS 294.145 (Prohibited conduct for custodial officer), ORS 294.805 to 294.895 (Local Government Investment Pool). Any revisions or extensions of these sections of the ORS shall be assumed to be part of this Investment Policy immediately upon being enacted.

**2. Suitable Investments**

The City will diversify investments across maturities, security types and institutions to avoid incurring unreasonable risks. The City has further defined the eligible types of securities and transactions as follows:

TYPE	DEFINITION
U.S. Treasury Obligation	Direct obligations of the United States Treasury whose payment is guaranteed by the United States. [ORS Section 294.035(3)(a)]
GSE – Agency Obligations	US Government Agencies, Government Sponsored Enterprises (GSEs), Corporations or Instrumentalities of the US Government - Federal Instrumentality Securities include, but are not limited to Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), Federal Home Loan Banks (FHLB), and the Federal Farm Credit Bureau (FFCB). [ORS 294.035(3)(a)]
Commercial Paper	Commercial Paper* that is rated A1+/P1 and has long term bonds which have a minimum rating of AA- by Standard and Poor's and Aa3 by Moody's. In the case where both rating agencies provide ratings on the corporation, the lowest rating will be used.
Corporate Indebtedness	Corporate indebtedness must be rated on the settlement date Aa3 or better by Moody's Investors Service or AA- or better by S&P [ORS Section 294.035 (3) (B)]. In the case of a split rating, the lower rating will be used.
Local Government Investment Pool	State Treasurer's local short-term investment fund up to the statutory limit per ORS Section 294.810.
Oregon Intermediate Fund	The Oregon Local Government Intermediate Fund (OLGIF) is a commingled investment pool for local governments offered by Oregon State Treasury due to Legislation HB2140 and pursuant to ORS Chapter 294. OLGIF provides qualified local government participants with a vehicle to invest assets over an intermediate time horizon (three to five years).
Certificates of Deposit	Certificates of deposit in insured institutions as defined in ORS Section 706.008, in credit unions as defined in ORS Section 723.006, or in federal credit unions, if the institution or credit union maintains a head office or a branch in this state [ORS Section 294.035(3)(d)].

Bank Time Deposit/Savings Account	Time deposit open accounts or savings accounts in insured institutions as defined in ORS Section 706.008, in credit unions as defined in ORS Section 723.006 or in federal credit unions, if the institution or credit union maintains a head office or a branch in this state [ORS Section 294.035(3)(d)].
Municipal Debt	Lawfully insured debt obligations of the States of Oregon, California, Idaho, and Washington and political subdivisions of those states if the obligations have a long-term rating on the settlement date of AA- or better by S&P or Aa3 or better by Moody's. In the case of a split rating, the lower rating of these two rating agencies will be used.
Bankers' Acceptance	A short-term credit investment created by a non-financial firm and guaranteed by a qualified financial institution* whose long-term letter of credit rating is at least AA- by Standard and Poor's or Aa3 by Moody's at the time of purchase. [ORS 294.035(3)(h)(A)]  *For the purposes of this paragraph, "qualified financial institution" means: (i) A financial institution that is located and licensed to do banking business in the State of Oregon; or (ii) A financial institution that is wholly owned by a financial holding company or a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Oregon [ORS Section 294.035(3)(h)].

**3. Collateralization**

Time deposit open accounts, Certificates of Deposit and savings accounts shall be collateralized through the Public Funds Collateralization Program in accordance with ORS Section 295.018. All depositories must be on the State of Oregon's qualified list. Additional collateral requirements may be required if the Investment Officer deems increased collateral is beneficial to the protection of the monies under the City's management.

**IX. INVESTMENT PARAMETERS**

**1. Diversification**

The City will diversify the investment portfolio to avoid incurring unreasonable risks, both credit and interest rate risk, inherent in over investing in specific instruments, individual financial institutions or maturities.

DIVERSIFICATION CONSTRAINTS ON TOTAL HOLDINGS: LIQUIDITY AND CORE FUNDS*				
Issuer Type	Maximum % Holdings	Maximum % Per Issuer	Ratings S&P	Ratings Moody's
US Treasury Obligations	100%	None	N/A	N/A

US Agency Primary Securities FHLB, FNMA, FHLMC, FFCB	100%	33%	N/A	N/A
US Agency Secondary Securities FICO, FARMER MAC etc.	10%	10%	Must be rated	Must be rated
Oregon Short Term Fund	ORS 294.810 Limit	None	N/A	N/A
Oregon Intermediate Fund	10%	None	N/A	N/A
Bank Time Deposits/Savings Accounts	20%	10%	OR Public Depository	OR Public Depository
Certificates of Deposit	10%	5%	OR Public Depository	OR Public Depository
Corporate Bonds	20%	5%	AA-	Aa3
Municipal Bonds (OR, CA, ID, WA)	10%	5%	AA-	Aa3
Commercial Paper	10%	5%	A1+	P1
Banker's Acceptance	10%	5%	A1+ AA- Long Term	P1 Aa3 Long Term
Local Government Investment Pool	ORS 294.810 Limit			

## 2. Investment Maturity

The City will not directly invest in securities maturing more than five (5) years from the date of purchase.

- a. The maximum weighted maturity of the total portfolio shall not exceed 1.5 years. This maximum is established to limit the portfolio to excessive price change exposure.
- b. Liquidity funds will be held in the State Pool or in money market instruments maturing six months and shorter. The liquidity portfolio shall, at a minimum, represent three months budgeted outflows.
- c. Core funds will be defined as the funds in excess of liquidity requirements. The investments in this portion of the portfolio will have maturities between 1 day and 5 years and will be only invested in high quality and liquid securities.

### Total Portfolio Maturity Constraints:

Maturity Constraints	Minimum % of Total Portfolio
Under 30 days	10%
Under 1 year	25%
Under 5 years	100%
WAM ( Weighted Average Maturity)	2 years
Security Structure Constraint	Maximum % of Total Portfolio
Callable Agency Securities	25%

Reserve or Capital Improvement Project monies may be invested in securities exceeding five (5) years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of the funds

**3. Prohibited Investments**

The City shall not lend securities nor directly participate in a securities lending or reverse repurchase program. The purchase of derivatives and use of reverse repurchase agreements are specifically prohibited by this policy. The City shall not purchase mortgage-backed securities.

**X. POLICY COMPLIANCE AND PERFORMANCE EVALUATION**

**1. Compliance Report**

A compliance report shall be maintained quarterly to document the portfolio versus the investment policy.

**2. Compliance Measurement and Adherence**

- a. Compliance Measurement: Guideline measurements will use [par/market] value of investments.
- b. Compliance Procedures: If the portfolio falls outside of compliance with adopted investment policy guidelines or is being managed inconsistently with this policy, the Investment Officer shall bring the portfolio back into compliance in a prudent manner and as soon as prudently feasible.
- c. Violations of portfolio guidelines as a result of transactions; actions to bring the portfolio back into compliance and; reasoning for actions taken to bring the portfolio back into compliance shall be documented and reported to the City Council.
- d. Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time. Securities need not be liquidated to realign the portfolio; however, consideration should be given to this matter when future purchases are made to ensure that appropriate diversification is maintained.
- e. As determined on any date that the security is held within the portfolio. If the credit rating of a security is subsequently downgraded below the minimum rating level for a new investment of that security, the Investment Officer shall evaluate the downgrade on a case-by-case basis in order to determine if the security should be held or sold. The Investment Officer will apply the general objectives of Safety, Liquidity, Yield, and Legality to make the decision. If the City has hired the services of an Investment Adviser, the Investment Officer will act on the recommendation of the Adviser.

**3. Performance Measurement**

The performance of the City of Albany will be measured against the performance of the Local Government Investment Pool, using monthly net yield of both portfolios as the yardstick. Preservation of capital and maintenance of sufficient liquidity will be considered prior to attainment of market return performance. Given these considerations, the City's portfolio should provide a net yield that is equal or better to that attained by the Local Government Investment Pool over interest rate cycles.

Additionally, a market benchmark will be determined that is appropriate for longer term investments based on the City's risk and return profile. The investment adviser will provide return comparisons of the portfolio to the benchmark on a monthly basis. When comparing the

performance of the City's portfolio, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return. This would include any in-house management of the funds, as well as outside management.

**XI. REPORTING REQUIREMENTS**

The Investment Officer shall submit quarterly and annual reports to the local governing board containing sufficient information to permit an informed outside reader to evaluate the performance of the investment program. More frequent reports may be provided when market conditions merit or if requested by the governing board.

Minimum quarterly reporting requirements for total portfolio:

- Earnings Yield
- Holdings Report (including mark to market)
- Transactions Report
- Weighted Average Maturity or Duration
- Compliance Report

**XII. INVESTMENT POLICY ADOPTION BY GOVERNING BOARD**

This investment policy will be formally adopted by the Albany City Council. The policy shall be reviewed on an annual basis by the Investment Officer and the Albany City Council. Material revisions to this policy will require a review by the Oregon Short Term Fund Board, pursuant to ORS.

Supersedes: Res No. 6459	Created/Amended by/date:	Effective Date:	Reviewed by Council: November 7, 2016
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TO: Albany City Council  
VIA: Wes Hare, City Manager  
FROM: Stewart Taylor, Finance Director *ST*  
DATE: November 2, 2016, for the November 7, 2016, City Council Work Session  
SUBJECT: Risk Management Report and Policy Review  
RELATES TO STRATEGIC PLAN THEME: ● Effective Government

Action Requested:

Receive a claims history report from the City's insurance broker and discuss the current Risk Management Policy. The City Council will consider readopting the policy at its regular meeting on Wednesday, November 9, 2016.

Discussion:

The City's Risk Management Policy was last reviewed and adopted by the City Council as Resolution Number 6460 on October 28, 2015. The policy requires an annual report and review by the City Council.

Staff has worked closely with the City's Insurance Broker, Barker-Uerlings Insurance, to review the current insurance coverage and the Risk Management Policy. The list of insurance coverage has been updated. No other changes are recommended in this year's review.

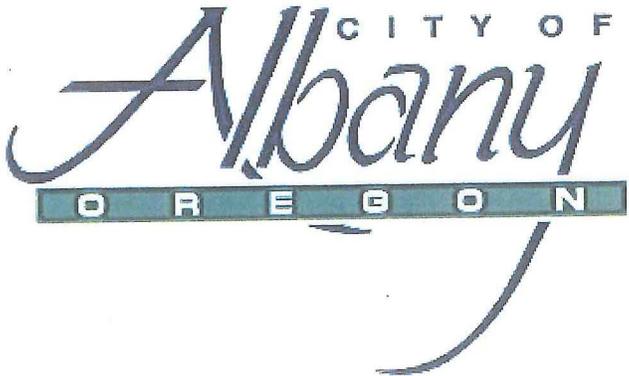
Budget Impact:

Costs of insurance are in the adopted budget. The Risk Management Policy sets parameters for managing risks and insurance coverage.

ST:md

Attachment: Risk Management Policy

# City of Albany Risk Management Policy



A small version of the City of Albany logo, featuring a bridge, trees, and a house.	<p><b>City of Albany</b> Finance Policy Policy #: F-08-08-009 Title: Risk Management</p>	
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## **I. POLICY STATEMENT**

It is the policy of the City of Albany to proactively identify and manage the inherent risks of providing municipal services. Potential losses will be mitigated through employee safety committees, loss prevention programs, property and liability insurances, workers' compensation, and employee health, life, and disability benefits.

## **II. GENERAL RESPONSIBILITIES**

Each employee of the City is responsible to contribute to a safe environment for all employees and the public. Employees should help identify and correct unsafe conditions and should follow all established safety laws, policies, and practices.

The City Manager and department directors are responsible to protect the City of Albany's assets by identifying and managing risks. Primary objectives include containing costs, minimizing accidents and injuries to employees and the public, reducing the frequency and severity of property loss, and promoting a healthy employee workforce and working environment.

Department directors are responsible for managing the risks of operations in their respective departments. They ensure that effective safety and loss prevention programs are implemented and oversee the investigation of claims and losses.

Department directors coordinate their efforts with the Senior Accountant who acts as the City's Risk Manager. The Risk Manager is responsible for facilitating claims processing and working closely with third party property and liability insurers.

The City Manager may choose to retain professional advisors, consultants, insurers, brokers, and agents of record to assist the City in placing appropriate insurances and developing effective safety and loss prevention programs.

## **III. SPECIFIC RESPONSIBILITIES**

- 1. Human Resources Director.**
  - a. Coordinate and promote city-wide safety awareness and employee wellness programs.
  - b. Manage the City's worker's compensation and health insurance programs to contain costs and promote safety and wellness for employees and their families.
- 2. Finance Director.**
  - a. Recommend appropriate levels of property and general liability insurance to the City Manager and City Council.
  - b. Coordinate periodic inventories of all property, buildings, equipment, vehicles, and other capital assets and verify that appropriate insurance is in place.
  - c. Maintain policies, bonds, and other legal documentation of insurance.
  - d. Provide an annual report to the City Council showing claims experience and the costs of insurance programs.
- 3. Fire Chief.**
  - a. Conduct fire and life safety inspections of City facilities on a periodic basis according to the level of risk in each facility.

- b. Verify that all facilities are in compliance with recognized fire code standards for fire and life safety.
4. **City Attorney.**
- a. Develop templates of contracts and leases which include language to identify and mitigate liability and other potential losses.
  - b. Notify the City Manager of changes in state statutes and common law that affect municipal liability.
  - c. Assist insurers in the investigation and settlement of claims against the City.
  - d. Review insurance and bond contracts.

**IV. RETAINING AND TRANSFERING RISK**

**1. Reserve Account.**

A Risk Management Fund will be maintained with a working balance of up to \$2,000,000 for unforeseen catastrophic events and major deductibles. Each department will be responsible for claims and deductibles up to \$10,000 per incident resulting from losses in their respective operations.

**2. Insurance Coverages.**

The following minimum policy limits and deductibles will be maintained:

**Property/Boiler & Machinery**

Limit:	Determined each year by the filed value of insured property.	
Deductibles:	Buildings/Contents	\$10,000
	Boiler & Machinery	\$10,000
	Mobile Equipment	\$10,000
	Earthquake	3% of value
		\$100,000 min
	Limit	\$25,000,000
	Flood	\$100,000
	Limit	\$10,000,000

**Tort Liability**

Limit: \$5,000,000

**Auto Liability**

Limit: \$5,000,000

**Auto Physical Damage**

Deductibles: Comprehensive \$100  
Collision \$500

**Senior Center Trips**

Limit: \$5,250

**3. Self Insurance.**

The City shall self-insure to the extent it is more cost effective than commercial insurance and does not present unacceptable financial or other risks to the City.

**V. ALLOCATION OF INSURANCE COSTS**

Departments and programs that have dedicated revenue sources or are independent legal entities will be charged insurance costs specific to the risk exposures of the operations of those departments and programs.

Premiums and related costs for liability insurance, workers' compensation, and property insurance will be allocated to each department based on claims experience and risk exposure. Property insurance costs are allocated according to the specific properties used and operated by each department or program.

## **VI. CONFIDENTIALITY OF RECORDS**

All personally identifiable and confidential information will be maintained in compliance with the Identity Theft Protection Policy, Finance Policy Number F-04-08. All employee medical records and long-term disability claims held by the City will be maintained in separate locked files and access will be controlled through the City Manager and Human Resources Departments.

All police reports will be kept confidential unless the Albany Police Department and/or the City Attorney approve release.

## **VII. REPORTING PROPERTY/CASUALTY ACCIDENTS AND LOSSES**

1. Accidents and losses must be reported promptly and in accordance with prescribed procedures. The benefits of timely reporting include enhanced citizen confidence, better protection of the City's interests, reduced time lost for employees and equipment, and savings realized through prompt settlements.

Reports of general liability claims and automobile accidents should be immediately reported to the Risk Manager. The following information should be included in every report:

- a. Date, time, and location of accident or event
- b. Description of vehicle, equipment, or property involved
- c. Name(s) of person(s) involved
- d. Name(s) of person(s) injured
- e. Description of any medical attention received
- f. Nature of damage/loss and estimated cost
- g. Description of circumstances; diagram of events if possible
- h. Insurance Policy Numbers, Agents, and/or Agencies
- i. Name(s) and addresses of witnesses
- j. Appropriate signatures
- k. Copy of DMV report, if filed
- l. Copy of police report, if filed

In addition, procedures described in Human Resources Policy HR-SF-02-001 (Property Loss/Damage) must be followed.

2. The Risk Manager will process all accident/loss notices, except workers' compensation, and will notify the appropriate insurance company.
3. The Human Resources Department will file workers' compensation accident reports with the appropriate insurance company. Workers' compensation incidents will be processed in accordance with Human Resources Policy HR-SF-03-001 (Reporting On-the-Job Injuries).
4. Accidents of a serious nature and those occurring on weekends or holidays should be called in to the appropriate supervisor and followed up with the proper accident forms and information. The Risk Manager should be notified of the accident on the first day back to work.

5. As required by law, on-the-job injuries to employees that result in overnight hospitalization for treatment (not just observation), must be reported to OR-OSHA within twenty-four (24) hours of the injury. An on-the-job accident that results in the hospitalization of three or more employees, or in a fatality, must be reported to OR-OSHA within eight (8) hours of the accident. In either of these situations, the Human Resources Generalist or Human Resources Director should be notified immediately so they may make notification to OR-OSHA.

**VIII. REPORTS TO BE FILED**

1. All Property/Casualty claims reports will be filed with the Risk Manager.
2. Minutes of City Council meetings, safety meetings, and all other City committee meetings in which Risk Management policy or procedure decisions are made will be filed as appropriate.
3. Inspection reports when the building inspector or Fire Department inspects City premises will be filed with the Risk Manager or the Fire Department.
4. Long-term disability and life insurance claims and workers' compensation claims and reports will be filed with the Human Resources Department.

**IX. RISK MANAGER RECORDS**

The Risk Manager shall keep the following records:

1. An inventory of current locations, descriptions, and insurable values of all property/vehicles owned or leased by the City.
2. An insurance register, outlining all coverages in force and including premiums, policy numbers, servicing agents, terms of coverage, and expiration dates.
3. Premium payment and allocation records.
4. Claims filed and pending.
5. Loss records subdivided into property, liability, and other liability claims paid by the insurer under existing insurance policies.
6. Claim recoveries received from third parties who have damaged City property or who are reimbursing for City wages paid.

Supersedes: Res No. 6460	Created/Amended by/date:	Effective Date:	Reviewed by Council: November 7, 2016
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TO: Albany City Council  
VIA: Wes Hare, City Manager  
FROM: Stewart Taylor, Finance Director *ST*  
DATE: November 2, 2016, for the November 7, 2016, City Council Work Session  
SUBJECT: Financial Policies

RELATES TO STRATEGIC PLAN THEME: ● Effective Government

RELATES TO: ● Continue recognition from the GFOA for excellence in budgeting and financial reporting.

Action Requested:

Give direction regarding any revisions to the Financial Policies. The City Council will consider adopting the proposed policies at its regular meeting on Wednesday, November 9, 2016.

Discussion:

The City's Financial Policies were last reviewed and adopted by the City Council as Resolution Number 6461 on October 28, 2015. The policies are reviewed on an annual basis.

There are no recommended changes to the Financial Policies this year.

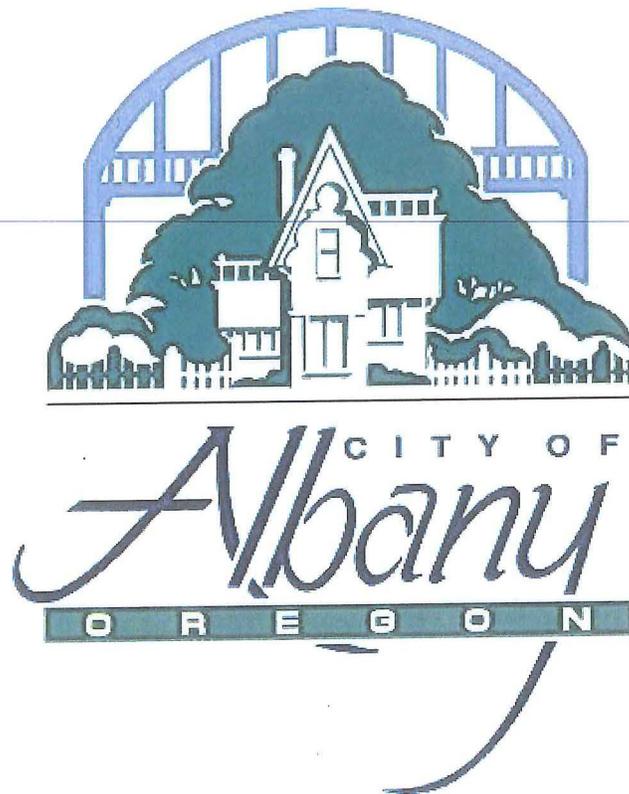
Budget Impact:

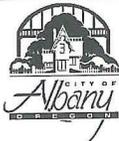
The Financial Policies establish parameters for the annual budget and ongoing financial operations.

ST:md

Attachment: Financial Policies

# City of Albany Financial Policies



	<p><b>City of Albany</b> Finance Policy Policy #: F-07-08-009 Title: Financial Policies</p>	
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## **I. POLICY STATEMENT**

It is the policy of the City of Albany to actively manage financial, operational, and budgetary affairs within established guidelines in order to maintain financial stability both now and in the future.

## **II. GENERAL GUIDELINES**

1. The City Manager and department directors are charged with achieving the themes, goals, and objectives adopted by the City Council in the City's Strategic Plan.
2. The implementing document for the Strategic Plan is the annually adopted budget. The adopted budget establishes types and levels of services through both operating and capital budgets. The relationships between the operating and capital budgets will be explicitly recognized and incorporated into the budget process. Resources will be identified to provide designated levels of service, and maintenance or enhancement of related capital and fixed assets.
3. The City will actively measure performance and pursue process improvements to enhance productivity and maximize resources.
4. Adequate reserves will be maintained for all known liabilities, including employee leave balances and explicit post employment benefits.
5. The City will actively seek partnerships with private interests and other government agencies to achieve common policy objectives, share the costs of providing local services, and support favorable legislation at the state and federal levels.
6. The City will seek out, apply for, and effectively administer federal, state, and foundation grants-in-aid that address the City's priorities and objectives.

## **III. REVENUES**

1. The City will actively identify and administer funding sources that create a reliable, equitable and diversified revenue stream to shelter the City from short-term fluctuations in any single revenue source and to maintain desired levels of services.
2. Revenues will be conservatively estimated in the budget process.
3. Target fund balances for operating budgets will range between 5 and 15 percent of operations.
4. The City will consider full cost recovery and comparable rates charged by other municipalities of similar size in establishing rates, fees, and charges.
5. The City will follow an aggressive policy of collecting revenues.
6. Enterprise and internal service funds are intended to be self-supporting.

## **IV. EXPENDITURES**

1. The City will identify priority services, establish appropriate service levels, and administer the expenditure of available resources to assure fiscal stability and the effective and efficient delivery of services.
2. The City will operate on a current funding basis. Expenditures will be monitored on an ongoing basis so as not to exceed current revenues and targeted fund balances.
3. The City Manager will take immediate corrective actions if at any time during a fiscal year revised revenue and expenditure estimates project a year-end deficit. Mitigating actions may include a hiring freeze, expenditure reductions, fee increases,

or use of contingencies. Actions to be avoided include expenditure deferrals into the following fiscal year, short-term loans, and use of one-time revenues to support ongoing operations.

4. Target contingencies for operating budgets will range between 5 and 15 percent of operations.
5. Internal service charges and project accounting should be used when service recipients and parameters of a project can be easily identified. The charges should be based on methodologies that fairly allocate the full cost of services. The Finance Director shall review the methodologies on a periodic basis to verify that they are consistent with federal guidelines and Oregon Local Budget Law.
6. The City Manager will undertake ongoing staff and third-party reviews of City programs to measure efficiency and effectiveness. Privatization and contracting with other governmental agencies will be evaluated as alternatives to in-house service delivery. Programs that are determined to be inefficient and/or ineffective shall be reduced in scope or eliminated.

#### **V. CAPITAL IMPROVEMENT PROGRAM (CIP)**

1. The City will monitor and periodically assess the City's capital equipment and infrastructure, setting priorities for its renovation and replacement based on needs and available resources.
2. The City will develop a multi-year program for capital improvements that will be reviewed annually in the budget process.
3. Projects in the CIP will be flagged as either funded or unfunded depending on whether or not the forecasted operating budget can support or fund the project. All funded projects are included in the operating budget for the corresponding budget year.
4. The City will maintain its physical assets at a level adequate to protect the City's capital investment and minimize future maintenance and replacement costs. The budget process will provide for review of maintenance and orderly replacement of capital assets from current revenues where possible.

#### **VI. CAPITAL ASSETS**

1. Capital assets are non-consumable assets with a purchase price of \$5,000 or greater and a useful life of more than one year.
2. The Finance Department will oversee a physical count/inspection of all capital assets at least on a biennial basis. All additions, deletions, and depreciation of infrastructure will be reported consistent with the requirements of the Government Accounting Standards Board Statement Number 34.
3. Adequate insurance will be maintained on all capital assets.

#### **VII. DEBT**

1. The City will generally limit long-term borrowing to capital improvements.
2. The City will follow a policy of full disclosure on every financial report, official statement, and bond prospectus.
3. The City Manager will ensure that continuing disclosure policies and procedures are in place and include the following:
  - a. The City's bond counsel will advise the City in developing appropriate policies and procedures.

- b. The Finance Director is primarily responsible for meeting all post-issuance and continuing disclosure requirements of all bonds issued by the City.
  - c. The Finance Director will participate in timely and appropriate training to be familiar with any changes in continuing disclosure requirements.
  - d. Records will be maintained to substantiate compliance for three years after securities have matured.
  - e. The City will take timely steps to correct any instances of noncompliance.
4. The City will strive to maintain its high bond ratings, currently AA- from Standard & Poor's and A2 from Moody's, and will receive credit ratings on all its bond issues.
  5. General obligation debt will not be used for self-supporting enterprise activities unless the activity provides a community-wide benefit.
  6. The City shall ensure that its general obligation debt margins are within the 3% true cash value limitation as set forth in ORS Section 287.004.
  7. Funding strategies that are necessary to support debt obligations should be implemented prior to debt payments becoming due so that debt obligations can be met from current revenues.
  8. The City will use voter-approved general obligation debt to fund general-purpose public improvements that cannot be financed from current revenues. Special purpose debt including certificates of participation, revenue bonds, and loans will be linked to specific funding sources.

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#### VIII. Grants

1. Community organizations that desire financial support from the City must submit a Community Grant application no later than March 1 in order to be considered for funding in the next budget year. Applications will be reviewed by the department director assigned by the City Manager. Primary consideration will be given to requests that further the goals and objectives in the Strategic Plan. Applications that are approved by the department director and City Manager shall be included in the Proposed Budget to be considered by the Budget Committee and City Council.

Any recipient of a Community Grant shall submit an accounting of how the funds were expended and the benefits achieved as required by City Council Resolution No. 5089. Recipients of grants greater than \$100,000 must also submit an independent review of financial policies and procedures related to the grant proceeds no later than six months following the end of the fiscal year in which the funds were granted.

Notwithstanding the above, community organizations and events funded with transient lodging tax revenues will follow the guidelines set forth in Finance Policy F-12-11-001 as currently adopted or amended.

2. City departments are encouraged to seek grants and other financial support from private, nonprofit, and government agencies that would supplement City resources in meeting adopted goals and objectives. Grants that are available on an annual basis should be included in the proposed budget and do not require further City Council action once the budget is adopted, unless required by the granting agency. The City Manager is responsible to oversee other grant applications. All awarded grants must be accepted and appropriated by resolution of the City Council as required by Oregon Local Government Budget Law (ORS 294.326(3)).

**IX. ACCOUNTING, AUDITING, AND FINANCIAL REPORTING**

1. The Finance Department is responsible to see that all accounting, auditing, and financial reporting comply with prevailing federal, state, and local statutes and regulations including generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants (AICPA), and the Government Finance Officers Association (GFOA).
2. The Finance Department will conduct periodic internal audits of financial procedures such as cash handling, purchasing, and accounts payable to test internal controls and to detect instances of fraud or abuse. The Finance Director shall establish locations and limits for petty cash, purchase cards, and other cash and purchasing procedures consistent with operational needs, GFOA best practices, and Oregon Administrative Rules and Revised Statutes.
3. The City will seek out and contract for the assistance of qualified financial advisors, consultants, and auditors in the management and administration of the City's financial functions.
4. The City Council will be provided monthly financial reports of revenues and expenditures.
5. A complete independent audit will be performed annually.
6. The City will issue annual financial reports in accordance with generally accepted accounting principles (GAAP) as outlined in the Governmental Accounting, Auditing, and Financial Reporting (GAAFR) publication.
7. The City will annually seek the GFOA Certificate of Achievement for Excellence in Financial Reporting and the GFOA Distinguished Budget Presentation Award.

Supersedes: Res. No. 6461	Created/Amended by/date:	Effective Date:	Reviewed by Council: November 7, 2016
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TO: Albany City Council

VIA: Wes Hare, City Manager  
Jeff Blaine, P.E., Public Works Engineering and Community Development Director JB

FROM: Staci Belcastro, P.E., City Engineer JB  
Ron Irish, Transportation Systems Analyst R-I

DATE: November 2, 2016, for the November 7, 2016 City Council Work Session

SUBJECT: Queen Avenue Rail Crossing

RELATES TO STRATEGIC PLAN THEME: • Great Neighborhoods

Action Requested:

Staff seeks direction from Council regarding an offer from ODOT Rail to make safety improvements at the Queen Avenue rail crossing.

Background:

At the September 12, 2016 Work Session, ODOT presented a proposal for a rail safety project at the Queen Avenue rail crossing. A concept plan for the crossing (Attachment A) was distributed illustrating the general extent of the proposed improvements. The crossing has a history of train related crashes involving vehicles, cyclists, and pedestrians, with two fatalities having occurred in the recent past. A recent weekday ODOT Rail video count at the crossing (Attachment B) shows a combined total of 158 pedestrians and cyclists making the crossing in a 7-hour period between 10:30 a.m. and 5:30 p.m. The proposed improvements include numerous changes to the crossing itself, as well as modification of the westbound Queen Avenue approach to the crossing. After reviewing the proposal, Council asked for additional information concerning the proposed improvements and possible impacts on the operation of the City's street system before making a decision.

*Project Components*

- *Reconstruction of all track crossing surfaces with concrete panels.* There are four sets of tracks at the crossing. They were constructed at different times with different surfaces, have settled at different rates, and as a result the crossing is noticeably rough. The west track has concrete panels, the middle two tracks have a rubberized surface, and the east track is asphalt. Union Pacific Railroad (UPRR) has indicated that if the safety project moves forward they would take advantage of the necessary temporary closure to replace all the crossings with new concrete panels. Each set of tracks would require a 48-hour closure to build. The closures could be timed to coincide with closures necessary for street work.
- *Sidewalk extensions and pedestrian path improvements across rail crossing.* Sidewalk improvements currently stop short of the rail crossing on both the north and south sides of the street. The current condition of the crossing makes it impossible to provide an ADA compliant pedestrian path across the crossing. The safety project would extend public sidewalk improvements to the crossing and acquire the right of way necessary for that extension. It would also take advantage of the new crossing panels installed by UPRR to provide designated pedestrian paths across the crossing that meet ADA standards.

- *Installation of pedestrian gates.* The project would install pedestrian gates across the sidewalk approaches to the crossing, and fencing along the rail line to discourage pedestrians from walking around the gates.
- *Second vehicle exit gate on east side of crossing.* The project would install a second vehicle gate on the east side of the crossing. The gate would block the eastbound lanes, preventing westbound drivers from driving around the gates to enter the crossing. Some drivers currently make that maneuver when trains making switching movements briefly clear the crossing. The risk to drivers is that the switching movement might not be completed, or that there is a fast approaching freight train on the mainline track.
- *Removal of driveway.* The project would remove an existing driveway on the northeast quadrant of the crossing used by railroad staff. Its removal would eliminate some turn movement conflicts that currently occur next to the crossing.
- *"2<sup>nd</sup> Train Coming" blank out sign.* The project would install a blank "2<sup>nd</sup> Train Coming" blank out sign for the westbound approach to the crossing. The normal condition of the sign is to be dark (no display), even when a single train is approaching and the crossing signals are activated. The sign would be illuminated when a second train approaches on a separate track. The two recent fatalities occurred when residents went around down gates, believing that a switching movement had concluded, and were then struck by a second train on the mainline.
- *Street modifications on east side of crossing.* The westbound approach to the crossing currently has two travel lanes, transitioning from one westbound travel lane 300 feet to the east at Ferry Street. The project would eliminate one of the westbound lanes between Ferry Street and the rail crossing. Additional space gained from the lane reduction would allow for installation of necessary crossing equipment and pedestrian improvements. There is insufficient room to install those improvements now given the road's current configuration and the location of switching equipment within the rail yard. Two westbound lanes would remain between the crossing and Pacific Boulevard.

#### *Traffic System Impacts*

Staff does not expect the proposed changes to Queen Avenue or the rail crossing to have a significant effect on the operation of the street system. Queen Avenue is already limited to one westbound lane east of Ferry Street. Shifting the transition to two lanes 300 feet west to the rail crossing will not reduce the capacity of the road. The planned safety improvements at the rail crossing would not modify rail operations and would have no impact on number or length of time the crossing is closed to vehicle traffic.

The removal of one of the westbound travel lanes on Queen Avenue between the crossing and Ferry Street (a distance of about 300 feet) would result in correspondingly longer westbound queues on Queen Avenue when the crossing is blocked by a train. However, the increase in queue length is not expected to result in an increase in the time it takes for the queue to resolve after a crossing event. Because two westbound lanes would remain between the crossing and Highway 99E (a distance of about 350 feet), the time it takes a queue to resolve and move through the highway intersection after a crossing event is not expected to change. It might, in fact, be possible to implement traffic signal timing changes with the project that would clear the

crossing more quickly than currently occurs, if a connection between the rail crossing and the traffic signal is incorporated into the project design.

The project is not expected to adversely impact the operation of the Queen Avenue/Ferry Street intersection. Westbound through movements would transition from one to two lanes at the rail crossing instead of at Ferry Street. Stop controlled right turns from Ferry Street would be unchanged. Stop controlled left turns from Ferry would have only one receiving lane, but that change is not expected to impact the capacity of the movement or result in additional delay. Drivers making that left turn movement must currently wait for a gap in approaching westbound traffic sufficient to make the turn; they don't know which receiving lane the approaching through westbound drivers will choose to take. That means that the acceptable gap for drivers wanting to make the left turn from Ferry onto Queen would be unchanged by the project. Eastbound movements along Queen Avenue and westbound left turn movements would be unchanged.

#### *Project Benefits and Impacts*

##### Benefits:

- *Improved safety at the rail crossing.* Proposed improvements would reduce the potential for crashes and improve safety at the crossing for vehicles, cyclists, and pedestrians.
- *A smoother and more durable crossing for vehicular traffic because of the installation of concrete crossing panels.* The concrete panel replacement planned by UPRR would correct the current rough condition of the crossing and provide a long lasting, durable surface.
- *ADA compliant pedestrian improvements across the crossing.* The project would fill the gap in pedestrian facilities that currently exists on both sides of the street across the crossing.
- *Project will be funded by ODOT Rail.* The project would be funded by ODOT Rail using federal rail safety dollars. There is no required City match.

##### Impacts:

- *Increased queue length during a crossing event.* The removal of one of the westbound lanes between Ferry Street and the crossing would result in longer queues, about 300 feet, for that approach during a crossing event. The time it takes for the queue to resolve and get through the highway intersection after a crossing event is not expected to change.
- *Traffic disruption during construction.* Traffic movements along Queen Avenue would be disrupted during project construction. Westbound movements could be accommodated through most of the construction window, but full closure of the crossing would be needed during installation of the concrete panels. Each of the four sets of tracks would require a 48-hour closure for concrete panel installation. Given the condition of the crossing, if the safety project does not go forward a full closure of the crossing will be needed at some point in the future to allow UPRR to perform track-crossing maintenance.
- *Driveway turn movement restrictions.* Two sites (457 and 410 Queen Avenue) have driveways just west of Ferry Street that would be restricted to right in and right out movements by the proposed street changes. Both sites have additional driveways to Queen Avenue that would continue to support unrestricted movements.

November 7, 2016 City Council Work Session

Page 4

November 2, 2016

Budget Impact:

Improvements to the rail crossing and associated street modifications would be funded by ODOT Rail with federal rail safety dollars. The City has not gone through the accreditation process required for local agencies to manage federally funded projects, so under normal circumstances the project would need to be designed and managed by ODOT. The delivery schedule for projects managed by ODOT is generally one to two years longer than for locally managed projects. The potential exists for the City to design the street improvements if a local partner can be found (such as City of Corvallis or Linn County) that is accredited to manage federally funded projects.

RGI:rk

Attachment (2)

N



1 inch = 40 feet



Concept Plan - Queen Avenue RR Crossing

## Bike and Pedestrian Counts at Queen Avenue Rail Crossing

Queen Avenue								
	West Bound				East Bound			
	South Side		North Side		South Side		North Side	
	Ped	Bike	Ped	Bike	Ped	Bike	Ped	Bike
10:30 – 11:30	3	1	1	1	2	0	0	0
11:30 – 12:30	1	0	0	1	2	1	0	0
12:30 – 13:30	4	12	0	3	2	2	3	0
13:30 – 14:30	3	2	4	4	3	3	3	1
14:30 – 15:30	10	2	2	4	22	7	2	0
15:30 – 16:30	4	2	5	4	4	4	0	0
16:30 – 17:30	2	1	1	5	2	5	5	3



TO: Albany City Council  
VIA: Wes Hare, City Manager  
FROM: Mario Lattanzio, Chief of Police *ML*  
Kris Schendel, Code Compliance Officer  
DATE: October 28, 2016, for November 7, 2016, City Council Work Session  
SUBJECT: Amend Albany Municipal Code (AMC) Chapter 7.08, Disorderly Conduct  
Amend AMC Chapter 7.84, Public Nuisances  
Amend AMC Chapter 9.04, Maintenance of Property  
Amend AMC Chapter 18.30, Property Maintenance  
Add AMC Chapter 7.83, Derelict Structures  
Add AMC Chapter 7.85, Chronic Nuisance Property

- RELATES TO STRATEGIC PLAN THEME:
- An Effective Government
  - A Safe City
  - Great Neighborhoods

Action Requested:

Amend AMC Chapter 7.08, Disorderly Conduct, Chapter 7.84, Public Nuisances; Chapter 9.04, Maintenance of Property; and Chapter 18.30, Property Maintenance.

Add AMC Chapter 7.83, Derelict Structures and Chapter 7.85, Chronic Nuisance Property.

Discussion:

As part of the budget process for FY2016-2017, a Code Compliance Officer position was added so that the City could be proactive in finding solutions to reduce code compliance violations, address chronic nuisances and derelict structures, and improve neighborhood livability. Over the past few months, Code Compliance Officer Kris Schendel has been reviewing current AMC language and working closely on suggested changes and additions with City Attorney Sean Kidd, Public Works Engineering and Community Development Director Jeff Blaine, Building Official Gary Stutzman, City Manager Wes Hare, and Management Assistant/Public Information Officer Marilyn Smith. This process is part of a multi-department collaboration to address code compliance issues and reduce blighted properties within the City of Albany. Listed below, you will find a summary of the suggested AMC amendments and Chapter additions.

**Suggested AMC Amendments**

**AMC Chapter 7.08, Disorderly Conduct**

Remove Subsection 7.08.050(1) because it is addressed in AMC 6.10.040(2). This change will clear up any confusion that occurs when reading the two different AMC Chapters.

**AMC Chapter 7.84, Public Nuisances**

In Section 7.84.020, the language is being changed to reflect that the City Manager or his/her designee makes the determination if an imminent nuisance exists.

Subsection 7.84.030(2), is being replaced to reflect the timeline that violators must follow if they receive a citation, how they can resolve the problem(s), and the abatement procedures if a property owner doesn't resolve the nuisance.

Sections 7.84.060 – 7.84.090 and 7.84.180 are being removed and combined into 7.84.140 – 7.84.170 as the language has been clarified to address the abatement and appeals process. The language has been updated so that a violator would appear before the Municipal Court Judge instead of the City Council.

Sections 7.84.120 and 7.84.130 amendments will allow noxious vegetation, weeds, and tall grass to be considered a public nuisance year-round versus only during fire season and would result in a violation instead of a crime. **Section 7.84.120 has been amended to reflect Council's discussion at the City Council Work Session on October 24, 2016, to change (e) to grass being in excess of ten inches.**

Subsection 7.84.200(3) has been amended to address signs in the public right-of-way.

**AMC Chapter 9.04, Health and Sanitation**

Section 9.04.045 is being added to address unsanitary conditions resulting from a dwelling not having permanent and potable running water from a domestic water supply for a period of 14 days or more.

**AMC Chapter 18.30, Property Maintenance**

The language in Section 18.30.105 is being amended to direct the reader to AMC 7.84.120 for information about noxious and excess vegetation.

**Suggested AMC Additions**

**AMC Chapter 7.83, Derelict Structures**

The addition of this Chapter will allow public safety personnel to better address derelict structures which will, in turn, reduce vandalism, squatting, theft, and other crime types associated with derelict structures. This Chapter would hold banks and other property owners accountable to ensure that they maintain their property in a safe manner. This Chapter also gives the City the power to contact the banks and give them a timeline of when they have to make the appropriate adjustments to be within City Code.

**AMC 7.85, Chronic Nuisance Property**

The addition of this Chapter is aimed at reducing the effect of crimes on residents living in the area of a chronic nuisance property. Chronic nuisance properties have a negative impact to the livability of neighborhoods. This Chapter sets the process for addressing owners of a chronic nuisance property and outlines what they will need to do to mitigate or correct the problem.

**Budget Impact:**

None.

ML:de

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) CHAPTER 7.08, DISORDERLY CONDUCT, BY DELETING SUBSECTION 7.08.050(1).

WHEREAS, the City of Albany is deleting AMC Subsection 7.08.050(1), Unnecessary Noise, Keeping of Any Animal; and

WHEREAS, the language in AMC Subsection 7.08.050(1) is addressed in AMC Chapter 6.10, Keeping of Animals, Subsection 6.10.040(2).

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 7, Public Peace, Morals, and Safety. AMC Chapter 7.08, Section 7.08.050 is hereby amended as follows:

**7.08.050 Unnecessary noise.**

It is unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any loud, disturbing, or unnecessary noise in the City. The following acts are declared to be violations of this section, but such enumerations are not deemed to be exclusive:

~~(1) The keeping of any animal which by frequent or loud continued noise disturbs the comfort and repose of any person in the vicinity;~~

~~(2) The use of any automobile, motorcycle, streetcar, or other vehicle, any engine, stationary or moving instrument, device, or thing so out of repair, so loaded, or operated in such manner as to create loud or unnecessary grating, grinding, rattling, or other noises;~~

~~(3) The sounding of any horn or signal device on any automobile, motorcycle, streetcar, or other vehicle on any street or public place of the City, except as a necessary warning or danger to property or person;~~

~~(4) The use of any mechanical device operated by compressed air, steam, or otherwise, unless the noise created thereby is effectively muffled;~~

~~(5) The erection, including excavation, demolition, alteration, or repair of any building, other than between the hours of 7:00 a.m. and 6:00 p.m., except upon special permit granted by the Common Council;~~

~~(6) Construction and activities ancillary to construction, not regulated under subsection (5) of this section or the Albany Standard Construction Specifications, including, but not limited to, preparation of materials, staging of construction equipment and apparatus, processing, preparing, or moving construction vehicles, equipment, or material, which generate sounds audible at any residentially zoned property; and which generate sounds for 30 minutes or more in any three-hour period between the hours of 6:00 p.m. and 7:00 a.m. This subsection does not apply to construction related activities performed by the City of Albany or pursuant to a City of Albany contract or those activities otherwise permitted by the Common Council;~~

~~(7) The use of any gong or siren upon any vehicle other than police, fire, or other emergency vehicle;~~

~~(8) The operation of any gasoline engine without having the same equipped with and using thereupon a muffler;~~

~~(9) The use of "muffler cutout" on any motor vehicle upon any street;~~

(910) The use or operation of any automatic or electric piano, phonograph, radio, loudspeaker, or any sound amplifying device so loudly as to disturb persons in the vicinity thereof or in such manner as renders the same a public nuisance; provided, however, that upon application to the City Manager permits may be granted to responsible persons or organizations to broadcast programs of music, news, speeches, or general entertainment;

(1011) The conducting, operating, or maintaining of any garage within 100 feet of any building used as a private residence, apartment house, rooming house, or hotel in such a manner as to cause loud or offensive noises to be emitted therefrom between the hours of 10:00 p.m. and 7:00 a.m. The foregoing acts are declared nuisances and any person violating any of the provisions of this section shall be deemed guilty of an offense. (Ord. 5761 § 1, 2011; Ord. 4937 § 1, 1990; Ord. 3873 § 1, 1975; Ord. 2823 § 43, 1958).

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) CHAPTER 7.84, PUBLIC NUISANCES.

WHEREAS, the City of Albany is amending AMC Chapter 7.84, Public Nuisances; and

WHEREAS, language is being added to Section 7.84.020 to clarify that the City Manager or his/her designee is responsible for making the determination if an imminent nuisance exists; and

WHEREAS, Section 7.84.030(2) has been rewritten to clarify how long a property owner or person in charge of property has to abate a nuisance; and

WHEREAS, Sections 7.84.060 – 7.84.090 are being removed because the language is duplicated in Sections 7.84.140 – 7.84.170; and

WHEREAS, Sections 7.84.140 – 7.84.170 reflect the appeals process and clarify that the violator would appear before the Municipal Court Judge instead of the City Council; and

WHEREAS, Sections 7.84.120 and 7.84.130, has been amended to be in effect year-round.

WHEREAS, Section 7.84.200(3) adds clarifying language that signs shall not be in the public right-of-way.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 7, Public Peace, Morals and Safety. The Albany Municipal Code Chapter 7.84, Public Nuisances, is hereby amended as follows:

**7.84.010 Definitions.**

For the purpose of the Albany Municipal Code, the following definitions apply:

- (1) “Debris” means the remains of something broken down or destroyed including, but not limited to: scrap metal, scrap paper, scrap plastic or scrap wood; pieces of asphalt, concrete, lumber or other building supplies; or yard clippings or cuttings of plant material.
- (2) “Garbage” means food waste, animal and vegetable waste, dead animal carcasses, refuse, rubbish, trash, or other useless or discarded material.
- (3) “Junk” means all inoperable motor vehicles, in which multiple major components are defective or removed for more than 30 consecutive days; any motor vehicle which has been unlicensed for more than 30 consecutive days; defective motor vehicle parts, abandoned automobiles, used tires, inoperable and defective machinery, or parts thereof, inoperable and defective appliances and parts thereof, metal portions of inoperable machinery, broken glass, empty glass, plastic or metal containers, scrap lumber, broken furniture, other wastes and/or discarded materials.
- (4) “Person in charge of property” means an owner, agent, contract purchaser, lessee, occupant, or other person having possession or control of real property.
- (5) “Place” or “property” means any premises, room, house, building or structure, or any separate part or portion thereof, whether permanent or not, or the real property itself.
- (6) “Public sidewalk” means a paved walkway within the public right-of-way or on publicly owned property.

- (7) "Street" means the portion of a road ordinarily used for vehicular travel, including the shoulder, and all public street right-of-way regardless of whether improved or unimproved.
- (8) "Imminent nuisance" means the existence of debris, garbage, or junk on real property that is detrimental to public health, safety, or welfare, and causes imminent danger to human life, safety, or to property. (Ord. 5211 § 1, 1995).

**7.84.020 Imminent nuisance.**

No person in charge of property may permit, or no person may cause to exist, any thing, substance, or act that is an imminent threat to public health, safety, or welfare. An imminent nuisance is unlawful and may be summarily abated as provided in AMC 7.84.150070. Determination of a condition, substance, act, or other occurrence constituting an imminent nuisance shall be made by the City Manager or his/her designee. (Ord. 5211 § 1, 1995).

**7.84.030 Debris, garbage, and junk deemed nuisance.**

- (1) It is hereby determined and declared that the keeping of any debris, garbage or junk out of doors on any street, public sidewalk, lot, or premises within the City, or in any building that is not wholly or entirely enclosed except doors for use of ingress and egress, is a nuisance and is unlawful.
- (2) Determination of the existence of a nuisance caused by the presence of debris, garbage or junk shall be determined by the City Manager or his/her designee. However, it shall be prima facie evidence of the existence of a public nuisance caused by debris, garbage or junk should three or more persons in charge of adjacent, adjoining, or other properties within 300 feet sign a petition and submit said petition to the City Manager or his/her designee complaining of a nuisance caused by the existence of debris, garbage or junk. In such case, the three or more persons signing the petition must all complain of the same nuisance arising from the existence of debris, garbage, junk on the property in question. Upon receipt of said petition from three or more persons, the City Manager or his/her designee shall within 30 days review the petition as well as inspect the place or property and make a determination as to whether abatement is presently appropriate. The City Manager or his/her designee may then either proceed under this chapter with enforcement, or shall notify the petitioners in writing that the nuisance does not qualify for enforcement. (Ord. 5211 § 1, 1995)

- (2) When it is determined that a nuisance caused by the presence of debris, garbage or junk exist and there is no imminent danger to human life, safety or to property, the City Manager or his/her designee shall issue a citation to the owner or person in charge of property.
  - (a) Upon the first offense, a 30-day notice shall be issued, with the citation, to allow the owner or person in charge of the property to abate the nuisance. If the owner or person in charge of the property completes abatement of the nuisance within the 30-days, the courts shall dismiss the citation.
  - (b) If special circumstances exist; a one time, up to 30-day extension may be granted to abate the nuisance.
  - (c) Any additional offenses by an owner or person in charge of a property shall remove the possibility of citation dismissal and abatement extension.
  - (d) When an owner or person in charge of property does not abate the nuisance, as defined in subsection (a),(b) or (c), the City Manager or his/her designee should proceed with abatement as set forth in AMC 7.84.140.

**7.84.040 Prohibited.**

It is unlawful for any person, or any agent or employees of any person to keep any debris, garbage or junk out of doors on any street, public sidewalk, lot, or premises within the City, or in any building that is not wholly or entirely enclosed except doors for use of ingress and egress. Violation of any provision of this chapter shall be punishable subject to penalties set forth in AMC 1.04.010. (Ord. 5211 § 1, 1995).

**7.84.050 Exception.**

The provisions of AMC ~~7.84.010~~ through ~~7.84.0380~~ do not apply to junk kept at a duly licensed junk yard or automobile wrecking house. (Ord. 5211 § 1, 1995).

~~7.84.060 Abatement.~~

~~In addition to the penalties as provided for in other portions of this code, the City may initiate abatement of a nuisance. Abatements are classified into two categories: imminent nuisance abatement and regular abatement. (Ord. 5211 § 1, 1995).~~

~~7.84.070 Imminent nuisance abatement.~~

~~(1) If a condition, substance, act or nuisance exists that is detrimental to public health, safety or welfare, it may summarily be abated if after inspection of the premises by the City Manager or his/her designee it is found to exist, and there is imminent danger to human life, safety, or to property. Determination of a condition, substance, act, or other occurrence constituting an imminent nuisance shall be made by the City Manager or his/her designee.~~

~~(2) No notice to the property owner or person in control of the property is required.~~

~~(3) Costs of abatement may be assessed as provided in AMC ~~7.84.080~~. (Ord. 5211 § 1, 1995).~~

~~7.84.080 Regular abatement.~~

~~Where there is no imminent danger to human life, safety, or to property but a nuisance is found to exist the following abatement procedures will apply:~~

~~(1) Notice shall be posted on the premises where the condition, substance, act, or nuisance exists, directing that the owner, person in charge and person occupying the property abate the situation.~~

~~(2) At the time of posting, the City Manager or his/her designee shall send a copy of the notice by certified mail and first class to:~~

~~(a) Owner at the last known address as listed in the county tax assessor's office; and~~

~~(b) The person in charge of the property or occupant if different from the owner.~~

~~(3) If prior notice of abatement was sent to the owner or person in charge of the property within the preceding 12 months, and ownership or control of the property has not changed and the prior notice was returned as undeliverable or the delivery was refused, then notice can be provided via publication in a newspaper of general circulation at least 10 days before abatement action is taken.~~

~~(4) The notice to abate shall contain:~~

~~(a) A description of the real property, by street address or otherwise, on which the condition, substance, act, or nuisance exists;~~

~~(b) A description of the condition, substance, act, or nuisance which must be abated;~~

~~(c) A direction to abate the condition, substance, act, or nuisance within a time specified on the notice;~~

~~(d) A statement that unless the condition, substance, act, or nuisance is removed, the City may abate the situation, and the cost of abatement will be charged to the owner;~~

~~(e) A statement that the owner or person in charge of the property may protest the abatement by giving written notice to the City Manager or his/her designee within 10 days from the date of the notice;~~

~~(f) A statement that if the cost of abatement is not paid by the owner or person in charge of the property, the cost of abatement may be assessed to and become a lien on the property.~~

~~(5) After completion of the posting and mailing, the person posting and mailing the notice shall file this certificate with the City Manager or his/her designee stating the date and place of mailing and posting.~~

~~(6) An error in the name or address of the owner or person in charge of the property or use of the name other than that of the owner or person in charge of the property shall not make the notice void, and in such case the posted notice shall be sufficient.~~

~~(7) Within 10 days after the posting and mailing of the notice, the owner or person in charge of the property shall abate the condition, substance, act, or nuisance specified in the notice, or appeal the City Manager's decision to the City Council as specified in subsection (8) of this section.~~

~~(8) Any person who shall receive a notice described in subsection (4) of this section may appeal the City Manager's decision by filing a notice of appeal with the City Manager or his/her designee within 10 days after the posting and mailing of the notice. The appeal must specify the basis therefore.~~

~~(9) The appeal shall be referred to the City Council for a hearing.~~

~~(10) If the Council determines that the nuisance does exist, the owner or person in charge of the property shall abate the nuisance within such time as the Council may grant or, if no specific period of time is granted, within 10 days of the Council's decision.~~

~~(11) If the nuisance has not been abated within the time allowed, the City Manger or his/her designee may cause the nuisance to be abated. Within 30 days of the date that abatement is taken, the City shall provide the owner or person in charge of the property with an accounting for costs of abatement.~~

~~(12) The person charged with the abatement of the nuisance shall have the right at reasonable times to enter upon the property to investigate or cause the removal of the situation. (Ord. 5211 § 1, 1995).~~

#### ~~7.84.090~~      **Costs to become a lien.**

~~(1) If costs of abatement are not paid within 30 days from:~~

~~(a) The date of the notice of costs; or~~

~~(b) If an appeal was timely filed, from the date of Council determination of the costs, an assessment of the costs shall be made by resolution and shall be entered in the docket of City liens and recorded with Linn County or Benton County as appropriate. When the entry is recorded in the City lien docket, the assessment shall constitute a lien upon the property subject to the abatement.~~

~~(2) The lien shall be enforced in the same manner as liens for assessment for local improvement districts and shall bear interest at judgment rate as determined by the Oregon Revised Statutes. The interest shall commence running on the date of entry of the lien in the City lien docket.~~

~~(3) An error in the name of the owner or person in charge of the property shall not void the assessment, nor shall a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 5211 § 1, 1995).~~

#### ~~7.84.060100~~      **Attractive nuisances.**

It is unlawful for any owner, lessee, occupant, or any person having control or custody or management of any premises to suffer or permit to remain unguarded upon such premises any machinery, equipment, or other device having the characteristics of an attractive nuisance or which is liable to attract children. It is further unlawful for any such owner, lessee, occupant, or person having control or custody or management of any such premises to suffer or permit to remain unguarded upon the premises any pit, quarry, cistern, well, or other excavation. (Ord. 5211 § 1, 1995).

#### ~~7.84.070110~~      **Injurious substances on street.**

It is unlawful for any person, firm, or corporation to permit to accumulate in or upon any yard, lot, or place, or premises on any street, alley, or sidewalk adjacent to or abutting upon any lot, block, place, or premises owned or controlled by him/her, any stagnant water or filth of any kind or to suffer or permit such premises to be or remain in such condition as to cause or produce or create noisome or offensive smell. (Ord. 5211 § 1, 1995).

#### ~~7.84.080120~~      **Animal carcasses.**

It is unlawful for any person to suffer or permit the carcass of any animal owned by him/her to remain upon the public streets or ways, and no person who is the owner or occupant of any property shall suffer or permit the carcass of any animal to remain thereon. It shall be the duty of such owner or occupant forthwith to cause the carcass to be buried or other disposition made of the same. (Ord. 5211 § 1, 1995).

**7.84.090130 Deposit of offensive substances.**

It is unlawful for any person to put any animal carcass or part thereof, or any excrement, or any putrid, nauseous, decaying, deleterious, or offensive substances in any stream, well, spring, brook, ditch, pond, or other inland waters within the corporate limits of the City, or to place any such substance in such position that high water or natural seepage will carry the same into any such waters. (Ord. 5211 § 1, 1995).

**7.84.10040 Drainage of surface waters.**

It is unlawful for the owner, lessee, or occupant of any building or structure to suffer or permit rainwater, ice, or snow to fall from any such building or structure upon any street or sidewalk or to flow across any such sidewalk, and every such owner, lessee, or occupant shall at all times keep and maintain in a proper state of repair adequate drainpipes or a drainage system sufficient to carry to the street, or other approved drainage facility, any overflow water accumulating on the roof or about such building. (Ord. 5841 § 2, 2014; Ord. 5211 § 1, 1995).

**7.84.11050 Creating a hazard.**

A person commits the crime of creating a hazard if:

- (1) He/she intentionally maintains or leaves in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside; or
- (2) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more and he/she intentionally fails or refuses to cover or fence it with a suitable protective construction. (Ord. 5211 § 1, 1995).

**7.84.12060 Noxious vegetation, weeds, and tall grass. ~~which constitute a fire hazard or vision clearance hazard are declared a nuisance.~~**

- (1) It is hereby determined and declared that weeds, tall grass, or other noxious vegetation are a public nuisance under any of the following conditions:
  - (a) When excess vegetation is determined by the Fire Chief or his/her designee to be a fire hazard, as defined under the provisions of the Oregon Fire Code;
  - (b) When a property contains plants that are poisonous to the touch (including, but not limited to, poison ivy, poison oak, and poison sumac);
  - (c) When rampantly growing plants (including blackberries, bamboo, etc.)
    - i. Cross property lines;
    - ii. cause damage to fences or structures; or
    - iii. cross onto the public right-of-way or impede travel on any part of a street or sidewalk;
  - (d) When vegetation creates a public safety concern such as blocking the view of oncoming traffic or blocking vision clearance areas around intersections and driveways; or
  - (e) When grass is in excess of 10 inches.

~~(1) It is hereby determined and declared that weeds, grass, or other noxious vegetation when determined by the Fire Chief or his/her designee to be a fire hazard, as defined under the provisions of the Uniform Fire Code, are a public nuisance.~~

~~(2) It is hereby determined and declared that weeds, grass, or other noxious vegetation over 15 inches in height are determined to be a vision clearance hazard and a public nuisance whenever they are at any of the locations set forth below:~~

- ~~(a) Within 50 feet of the facing edge of the curb of any improved street or road; or~~
- ~~(b) Within 50 feet of the edge of the pavement on any paved, but not fully improved, street or road; or~~
- ~~(c) Within 50 feet of the traveled way on any unimproved dirt or gravel street or road.~~

- (2) It is unlawful for the owner or any person in possession or control of any lot or premises within the city to maintain a lot or premises which is determined to be a fire hazard or safety vision clearance hazard as defined in subsections (1) or (2) above. (Ord. 5540 § 1, 2002; Ord. 5250 § 1, 1996; Ord. 5211 § 1, 1995).

(3) Violation of this section shall be an infraction.

#### **7.84.13070 Notice to property owner for noxious vegetation, weeds, and tall grass.**

Unless abated as an imminent nuisance summary abatement as provided in AMC 7.84.150-7.84.180, the Fire Chief/City Manager or his/her designee, in the case of abatement due to a fire hazard, or the Public Works Director/City Manager or his/her designee, in the case of abatement of a safety vision clearance hazard, shall notify the owner or person in possession or control of the premises on which the nuisance is located of the presence of the nuisance.

- (1) Notice shall be sufficient if it is mailed to any person at the same address that person receives notice of taxes due upon the real property in question. Said notice shall be by first class certified mail or delivered in person, and this notice shall be sufficient to apply the provisions of the abatement process contained in AMC 7.84.180. (Ord. 5250 § 2, 1996; Ord. 5211 § 1, 1995).

(2) The notice shall contain:

- (a) A description of the real property, by street address or otherwise, on which the condition, substance, act, or nuisance exists;
- (b) A description of the condition, substance, act, or nuisance which must be abated;
- (c) A direction to abate the condition, substance, act, or nuisance within a 14 calendar days;
- (d) A statement that unless the condition, substance, act, or nuisance is removed, the City may abate the situation, and the cost of abatement shall be a fee sufficient to cover the direct cost of removal, plus 30 percent for administrative overhead; and this total cost shall be charged to the owner;
- (e) A statement that if the condition is not abated within the time frame specified a citation could be issued.

#### **7.84.140 Abatement.**

In addition to the penalties as provided for in other portions of this code, the City may initiate abatement of a nuisance. Abatements are classified into two categories: imminent nuisance abatement and regular abatement. (Ord. 5211 § 1, 1995).

#### **7.84.150 Imminent nuisance abatement.**

- (1) If a condition, substance, act or nuisance exists that is detrimental to public health, safety or welfare, it may summarily be abated if after inspection of the premises by the City Manager or his/her designee it is found to exist, and there is imminent danger to human life, safety, or to property. Determination of a condition, substance, act, or other occurrence constituting an imminent nuisance shall be made by the City Manager or his/her designee.
- (2) No notice to the property owner or person in control of the property is required.
- (3) Costs of abatement may be assessed as provided in AMC 7.84.160 and 7.84.170. (Ord. 5211 § 1, 1995).

**7.84.160 Regular abatement.**

Where there is no imminent danger to human life, safety, or to property but a nuisance is found to exist, the following abatement procedures will apply:

- (1) Notice shall be posted on the premises where the condition, substance, act, or nuisance exists, directing that the owner, person in charge and person occupying the property abate the situation.
- (2) At the time of posting, the City Manager or his/her designee shall hand deliver or send a copy of the notice by certified mail and first class to:
  - (a) Owner at the last known address as listed in the county tax assessor's office; and
  - (b) The person in charge of the property or occupant if different from the owner.
- (3) If prior notice of abatement was sent to the owner or person in charge of the property within the preceding 12 months, and ownership or control of the property has not changed and the prior notice was returned as undeliverable or the delivery was refused, then notice can be provided via publication in a newspaper of general circulation at least 10 days before abatement action is taken.
- (4) The notice to abate shall contain:
  - (a) A description of the real property, by street address or otherwise, on which the condition, substance, act, or nuisance exists;
  - (b) A description of the condition, substance, act, or nuisance which must be abated;
  - (c) A direction to abate the condition, substance, act, or nuisance within a time specified on the notice;
  - (d) A statement that unless the condition, substance, act, or nuisance is removed, the City may abate the situation, and the cost of abatement shall be a fee sufficient to cover the direct cost of removal, plus 30 percent for administrative overhead; and this total cost shall be charged to the owner;
  - (e) A statement that the owner or person in charge of the property may protest the abatement by giving written notice to the City Manager or his/her designee within 10 days from the date of the notice;
  - (f) A statement that if the cost of abatement is not paid by the owner or person in charge of the property, the cost of abatement may be assessed to and become a lien on the property.
- (5) After completion of the posting and delivering/ mailing, the person posting and delivering/ mailing the notice shall file this certificate with the City Manager or his/her designee stating the date and place of delivering/ mailing and posting.
- (6) An error in the name or address of the owner or person in charge of the property or use of the name other than that of the owner or person in charge of the property shall not make the notice void, and in such case the posted notice shall be sufficient.
- (7) Within 10 days after the posting and delivering/ mailing of the notice, the owner or person in charge of the property shall abate the condition, substance, act, or nuisance specified in the notice, or appeal the City Manager's decision to the Municipal Court as specified in subsection (8) of this section.
- (8) Any person who shall receive a notice described in subsection (4) of this section may appeal the City Manager's decision by filing a notice of appeal with the City Manager or his/her designee within 10 days after the posting and mailing of the notice. The appeal must specify the basis therefore.
- (9) The appeal shall be referred to the Municipal Court for a hearing.

- (10) If the Municipal Judge determines that the nuisance does exist, the owner or person in charge of the property shall abate the nuisance within such time as the Judge may grant or, if no specific period of time is granted, within 10 days of the Judge's decision.
- (11) If the nuisance has not been abated within the time allowed, the City Manger or his/her designee may cause the nuisance to be abated. Within 30 days of the date that abatement is taken, the City shall provide the owner or person in charge of the property with an accounting for costs of abatement.
- (12) The person charged with the abatement of the nuisance shall have the right at reasonable times to enter upon the property to investigate or cause the removal of the situation. (Ord. 5211 § 1, 1995).
- (13) Remedies Nonexclusive. The procedures provided by this chapter are not exclusive, but are in addition to abatement procedures and other remedies provided by other laws and ordinances. (Ord. 5250 § 3, 1996; Ord. 5211 § 1, 1995).

**7.84.170 Costs to become a lien.**

- (1) If costs of abatement are not paid within 30 days from:
  - (a) The date of the notice of costs; or
  - (b) If an appeal was timely filed, from the date of Judge's determination of the costs, an assessment of the costs shall be made by resolution and shall be entered in the docket of City liens and recorded with Linn County or Benton County as appropriate. When the entry is recorded in the City lien docket, the assessment shall constitute a lien upon the property subject to the abatement.
- (2) The lien shall be enforced in the same manner as liens for assessment for local improvement districts and shall bear interest at judgment rate as determined by the Oregon Revised Statutes. The interest shall commence running on the date of entry of the lien in the City lien docket.
- (3) An error in the name of the owner or person in charge of the property shall not void the assessment, nor shall a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 5211 § 1, 1995).

**7.84.180 Abatement.**

- (1) ~~Right to Appeal Fire Hazard Determination. If the owner or person in possession or control of the real property that is determined to be a fire hazard, as provided in AMC 7.84.160, wishes to contest the decision of the Fire Chief or his/her designee concerning the presence of a fire hazard on the subject premises, such appeal must be perfected as follows:~~
  - ~~(a) Written notice of appeal must be actually received by the office of the Albany Fire Chief within 10 days of appellant's receipt of the notice described in AMC 7.84.170.~~
  - ~~(b) The notice of appeal must name all owners of the real property in question and all persons in possession and control thereof. The notice shall also set forth the addresses and telephone numbers of all such persons. The notice shall also set forth the particulars by which the appellant disagrees with the determination of the Fire Chief or his/her designee.~~
  - ~~(c) Upon receipt of a notice of appeal as subscribed above, a hearing shall be held before the Building Board of Appeals. Notice of the hearing shall be mailed to the appellant at the address set forth in the notice of appeal. Failure of the appellant to attend the hearing shall constitute an abandonment of the appeal.~~
  - ~~(d) The Building Board of Appeals may affirm, reverse, or modify the decision of the Fire Chief or his/her designee.~~
  - ~~(e) The decision of the Building Board of Appeals shall be made in writing and shall be mailed to the appellant at the address set forth in the notice of appeal. The decision of the Building Board of Appeals shall be final.~~

(2) ~~Time to Abate Nuisance.~~ Except in the case of summary abatement, a person who receives a notice advising them of the existence of noxious vegetation, weeds, and grasses upon property subject to their ownership, possession, or control shall have 10 days from the receipt of such notice to cut or otherwise remove the vegetation in accordance with the direction contained within the notification. In the event that the nuisance exists as a result of a fire hazard, the time for abatement shall be extended in the event of an appeal. Such extension shall end 10 days following resolution of the appeal or at such other time as the Building Board of Appeals may specifically provide. In the event that the nuisance has not been abated within these time lines, the City may proceed to abate the nuisance as further provided in this section.

(3) ~~Cutting and Removal by City.~~ The City Manager or his/her designee may cause to be cut any weeds, grass, or other noxious vegetation which have been determined to be a public nuisance. The cost of removal of said weeds, grass, and other noxious vegetation shall be a fee sufficient to cover the direct cost of removal, plus 30 percent for administrative overhead; and this total cost and fees shall be charged to owner of the property and will become a lien against the property.

(4) ~~Right to Enter.~~ In the event it becomes necessary for the City Manager or his/her designee to undertake the cutting and removal of the grass, weeds, and other noxious vegetation from any premises within the city, the designate of the City Manager shall have the right at reasonable times to enter into or upon said property to cut said grass, weeds, and other noxious vegetation.

(5) ~~Cost to Become a Lien.~~ Upon completion of clearing of any real property under the provisions of this section, and in the event the fee is not paid within 30 days thereafter, the City Manager or his/her designee shall file with the City Recorder and thereafter present to the City Council and itemized statement of the cost thereof as specified in this section. After providing the notice and hearing set forth below, the City Council shall, by ordinance, determine the reasonableness of said statement of costs and adjust the same if necessary and thereupon the amount of such statements as approved by the City Council shall be an obligation owed to the City of Albany by the owner or owners of the real property involved; and the City shall have a lien upon said real property for such sum and the lien shall be entered in the lien docket and enforced against said property in the same matter provided for the enforcement of City liens.

(6) ~~Notice and Hearing.~~ Prior to the adoption of the ordinance referred above, the City Manager or his/her designee shall cause a notice to be mailed by registered or certified mail, postage prepaid, to the record owner or owners of any real property upon which the City proposes to impose a lien for the costs of clearing of any real property under this section. This notice shall be mailed to the owner or owners of the real property in question at the address designated in the County Real Property Tax Assessment Rolls. An error in the name of the property owner or owners shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void. Any lien imposed pursuant to this section shall be a valid lien against the property. The notice shall contain a summary of the costs which are proposed to be assessed against the owner's property and shall advise of the City's intent to assess said costs against the real property upon which the work was performed and shall further advise the owner or owners of their right to hearing before the City Council concerning the proposed assessment and the date and time of said hearing.

(7) ~~Summary Abatement.~~ Should the Fire Chief or his/her designee determine, in the case of a nuisance based upon a fire hazard, or the Public Works Director or his/her designee determine, in the event of a nuisance due to vision clearance hazard, that the nuisance in question constitutes a serious and immediate life safety hazard, the City may summarily abate the nuisance, either through the use of City personnel or third persons contracted for that purpose, without prior notice to the property owner or persons in possession or control of the premises. As soon as practicable following such abatement, the applicable City official shall cause a notice describing the abatement to be mailed to the property owner by certified mail at the address to which such person would have been entitled to receive notice pursuant to a nonsummary abatement. If the summary abatement was undertaken as a result of a fire hazard, the property owner may appeal the City's actions in the same manner as that provided for a nonsummary abatement and the Building Board of Appeals shall determine whether or not circumstances justifying summary abatement existed. In the event that the Building Board of Appeals determines that summary abatement was warranted, the costs of such abatement, together with the administrative charge, shall become a lien upon the property in the same manner as a nonsummary abatement. In the event that the Building Board of Appeals determines that summary abatement was not required, the costs of the abatement shall not be charged against the property. The costs incurred in the abatement of a vision clearance hazard, including the administrative charge, shall be charged against the property and become a lien in the same manner as in nonsummary abatement.

~~(8) Remedies Nonexclusive. The procedures provided by this chapter are not exclusive, but are in addition to abatement procedures and other remedies provided by other laws and ordinances. (Ord. 5250 § 3, 1996; Ord. 5211 § 1, 1995).~~

**7.84.180190 Ongoing sale of household items (garage sales) deemed a nuisance.**

- (1) It is unlawful to offer, from a residential address, household items for sale to the general public more than three times per calendar year and in excess of three consecutive days per event.
- (2) Items offered for sale shall not be displayed or stored in the public right-of-way, in a clear vision area, or on another's property without the owner's permission.
- (3) Signs advertising garage sales shall not exceed two on-premises and two off-premises signs measuring no more than four square feet per face and four feet in height. ~~Signs shall not be erected in the public right-of-way.~~ Signs shall be erected no more than one day prior to the event and shall be removed not later than one day after.
- (4) The prohibitions set forth above shall apply jointly and severally to each owner or occupant of the real property used in the commission of the violation and/or any person who offers goods for sale.
- (5) Violation of this section shall be an infraction. (Ord. 5211 § 1, 1995).

**7.84.190210 Requirements for shopping cart providers.**

A person that supplies shopping carts for public use at the person's business shall:

- (1) Post signs in sufficient number to give notice to members of the public entering onto or leaving the business premises that unauthorized appropriation of a shopping cart is a crime under ORS 164.015 and provide a toll-free or local telephone number that members of the public may use to report abandoned shopping carts.
- (2) Identify the person's business on each shopping cart and post a sign on the shopping cart that:
  - (a) Notifies any member of the public using the shopping cart that unauthorized appropriation of a shopping cart is a crime under ORS 164.015;
  - (b) Provides a toll-free or local telephone number for use in reporting an abandoned shopping cart.
- (3) Establish, maintain, and make available to the public, at the person's own expense, a toll-free or local telephone line for the purpose of reporting abandoned shopping carts. The person shall forward each report the person receives concerning an abandoned shopping cart to the owner of the shopping carts and to the Albany Police Department Community Resource Unit.
- (4) Retrieve abandoned shopping carts. (Ord. 5694 § 1, 2008).

**7.84.200220 Retrieval and disposal of carts – Fees.**

- (1) A person may agree with other persons to share and to pay expenses related to the toll-free or local telephone line described in AMC 7.84.190210(3). The agreement shall provide that any person designated to operate the toll-free or local telephone line and receive reports concerning abandoned shopping carts must forward the reports in accordance with AMC 7.84.190210(3).
- (2) A person shall retrieve a shopping cart that the person owns within 72 hours after receiving notification that the shopping cart has been abandoned.

- (3) If the City identifies, salvages, or reclaims an abandoned shopping cart, it shall use the toll-free or local telephone line described in AMC 7.84.190210(3) to report the existence and location of an abandoned shopping cart, if the owner is identifiable.
- (4) The City may take custody of an abandoned shopping cart and impose a fine of \$50.00 on the owner of the shopping cart if the owner does not retrieve the shopping cart within 72 hours after the City makes a report under subsection (3) of this section or after the owner receives a report under AMC 7.84.190210(3).
- (5) The City may release a shopping cart in the City of Albany's custody to the owner upon payment of the \$50.00 fine.
- (6) The City may take title to a shopping cart in the City of Albany's custody and dispose of the shopping cart as the City of Albany deems appropriate if the owner does not claim the cart within 30 days. (Ord. 5694 § 1, 2008).

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) CHAPTER 9.04, MAINTENANCE OF PROPERTY, BY CREATING A NEW SECTION 9.04.045, ENTITLED UNSANITARY CONDITIONS.

WHEREAS, the City of Albany is creating AMC Section 9.04.045, Unsanitary Conditions, to improve the livability of the community and to promote safe neighborhoods; and

WHEREAS, unsanitary conditions occur in dwellings that do not have permanent and potable running water from a domestic water supply; and

WHEREAS, it is in the public's best interest to include this Section in AMC Chapter 9.04 Maintenance of Property.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Chapter Title 9, Health and Sanitation.  
AMC Chapter 9.04 is hereby amended as follows:

**9.04.010 Maintenance required Responsibility.**

Any person who is the owner or in control of, or the agent for, any lot, parcel of land or premises in the City shall be required to maintain such premises in a fashion conducive to good sanitation such that no menace to the public health or well-being shall be created nor made likely to be created by any conditions which may exist or come to exist upon such premises. (Ord. 4129 § 1, 1978).

**9.04.020 Extent of menace – Appeal.**

- (1) The Health Officer as designated by the City Council and/or the Public Works Director shall be empowered to determine the extent to which any particular situation is a menace to the public health or well-being, and shall be further authorized to determine the appropriate measures to be taken and the time allowed for the removal of such menace, and the person who is the owner of, or the agent for the affected property, shall be required to take the prescribed measures in the time allowed.
- (2) Should the ruling of the Public Works Director and/or Health Officer appear to be overly harsh or unjust, the affected party may appeal to the City Council in writing and within seven days from the ruling by the Public Works Director and/or Health Officer. At the first regular meeting following receipt of said appeal, the Mayor shall appoint a committee of at least three disinterested persons, including at least one doctor of medicine who shall investigate the particular situation and ruling and make recommendations concerning the same. The Public Works Director and/or Health Officer shall then be bound to comply with such recommendations. (Ord. 4129 § 2, 1978).

**9.04.030 Definitions.**

For the purposes of this chapter, the following words, phrases, abbreviations, terms and their derivatives shall be construed as specified in this section. Words used in the singular shall include the plural and the plural the singular.

- (1) "Domestic water supply" means any water supply system which serves potable water including wells.
- (2) "Potable water" means water which is sufficiently free from biological, chemical, physical or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects and which has such other physical properties as to be palatable to humans for drinking purposes.

- (3) "Privy" means a detached building used by humans for the purposes of defecation or urination and lacking a means of automatic discharge of the matter deposited; pit toilet. This definition shall not include properly serviced and maintained chemical toilets used on a temporary basis at construction sites or to service periodic or irregularly scheduled short term activities. Such temporary use shall not exceed 90 days without approval of the Director of Public Works. (Ord. 5026 § 1, 1993; Ord. 4129 § 3, 1978).

#### **9.04.040 Minimum requirements.**

Minimum requirements for good sanitation shall include at least the following:

- (1) No privy, water closet or plumbing connected indirectly to a domestic water supply not connected to a sanitary sewer of the City shall be constructed, maintained or used. Exceptions to this requirement for the connection to a sanitary sewer shall be allowed only by consent of the City Council which shall be done in the form of the City waste nonconnection permit. Application for a City waste nonconnection permit shall be made to the City Council setting forth a description of the property involved with reasons that a sewage nonconnection permit should be granted. Sewage nonconnection permits shall be issued for a period not to exceed one year and will expire one year from date of issue. Requests for renewal of sewage nonconnection permits will be made in the same manner as an application for an original sewage waste nonconnection permit.
- (2) No human excreta, kitchen wastes, laundry water, sink water or toilet wastes should be allowed to discharge or flow upon the surface of the ground or into any ditch, gutter, street, roadway or public place, nor shall such wastes discharge onto any private property so as to create a nuisance or health hazard.
- (4) No abandoned or deep well shall be used for the disposal of sewage or household or industrial wastes. No privy vault, cesspool or septic tank, allowed under a City waste nonconnection permit shall be used unless the same is watertight and shall be located in any water-bearing stratum, nor shall any privy vault, cesspool or septic tank be located so that the same may pollute any domestic water supply. (Ord. 4129 § 4, 1978).

#### **9.04.045 Unsanitary Conditions**

It shall be *prima facie* evidence that unsanitary conditions exist in a dwelling which does not have permanent and potable running water from a domestic water supply for a period of 14 days or more.

#### **9.04.050 Failure to comply with regulations.**

Failure to comply with the rules and regulations governing sanitation issued by the Oregon State Board of Health shall be *prima facie* evidence of violation of this chapter. (Ord. 4129 § 5, 1978).

#### **9.04.055 Human waste.\***

No person shall deposit or discharge any human waste on public property upon any street, alley, public grounds, building, or place open and available to the general public. (Ord. 5820 § 1, 2013).

\*Code reviser's note: Ordinance 5820 adds the provisions of this section as Section 9.04.050. The section has been editorially renumbered to prevent duplication of numbering.

**9.04.060 Penalty for violation.**

Any person violating any of the provisions of Section 9.04.010 or failing to meet the minimum requirements in Section 9.04.040 or failing to comply with the provisions of Section 9.04.045 or 9.04.050 shall be deemed guilty of a misdemeanor and shall be subjected to those penalties provided in Section 1.04.010 of this code. (Ord. 4129 § 6, 1978).

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) CHAPTER 18.30, PROPERTY MAINTENANCE, SECTION 18.30.105, EXCESSIVE VEGETATION.

WHEREAS, the City of Albany is amending AMC Chapter 18.30, Property Maintenance, to update Section 18.30.105, Excessive Vegetation, to be aligned with AMC Chapter 7.84, Public Nuisances, Section 7.84.120, Noxious vegetation, weeds, and tall grass; and

WHEREAS, both AMC Chapters 18.30 and 7.84 address excessive vegetation; and

WHEREAS, it is in the public's best interest to remove duplicate language in AMC 18.30.105.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 18, Building Code Administration and Property Maintenance. AMC Chapter 18.30, Section 18.30.105 is hereby amended as follows:

**18.30.105 Excess vegetation.**

~~All weeds and grass that are located in lawn areas and have a prevailing height in excess of 15 inches should be cut and removed and kept cut and removed. (Ord. 5647 § 1 (Exh. C), 2006). Shall comply with AMC 7.84.120.~~

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE (AMC) TITLE 7 BY ADDING A NEW CHAPTER 7.83 TITLED DERELICT STRUCTURES.

WHEREAS, the City of Albany is adding AMC Chapter 7.83, Derelict Structures, to improve the livability of the community and to promote safe neighborhoods; and

WHEREAS, derelict structures pose a safety hazard to residents and are an attractive nuisance; and

WHEREAS, AMC Chapter 7.83 will allow public safety personnel to better address derelict structures; and

WHEREAS, vandalism, squatting, theft, and other crime types associated with derelict structures will be reduced.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 7, Public Peace, Morals, and Safety. AMC Title 7 is hereby amended to add Chapter 7.83 titled Derelict Structures:

Sections:

- 7.83.010 Derelict Structures Prohibited.
- 7.83.020 Definition.
- 7.83.030 Order to Vacate Building or Structures.
- 7.83.040 Prohibited Habitation.
- 7.83.050 Removal of Placard Prohibited.
- 7.83.060 Temporary Safeguards.
- 7.83.070 Derelict Structure Registration.
- 7.83.080 Derelict Structure Fees.
- 7.83.090 Refund of Derelict Structure Fees.
- 7.83.100 Abatement.
- 7.83.110 Interference with abatement personnel prohibited.
- 7.83.120 Costs to become a lien.

**7.83.010 Derelict Structures Prohibited.**

Derelict buildings or structures on any property are hereby declared to be unlawful.

**7.83.020 Definition.**

A derelict building or structure, as a result of disuse and neglect, exists if the building or structure is unfit for human habitation, or poses an incipient hazard, or is detrimental to public health, safety or welfare, as a result of one of the following conditions. The Police Chief or his/her designee, at his/her sole discretion, shall determine a building or structure derelict based on the number and extent of the following factors:

- (1) Unoccupied and unsecured;
- (2) Partially constructed;
- (3) Abandoned structure or attractive nuisance;
- (4) Dilapidation (in a state of disrepair due to misuse or neglect);
- (5) Structural defects noted by the Building Official or his/her designee;
- (6) Identification as a dangerous building or structure per AMC 18.28;
- (7) Defects increasing the hazard of fire, accident, or other calamity;
- (8) Infestation of pests; and
- (9) No utility service(s) to maintain sanitary conditions.

**7.83.030 Order to Vacate Building or Structures.**

- (1) If the Police Chief or his/her designee finds a building or structure in violation of AMC 7.83.010, the Police Chief or his/her designee shall order that a certified letter be mailed to the property owner and a placard be posted on the building or structure, ordering the building or structure vacated, and the owner to register the building or structure as provided in AMC 7.83.070 – 7.83.090.
- (2) The placard shall contain listed information:
  - (a) Description of the premises sufficient for identification;
  - (b) A statement of the reason or reasons why the location has been posted;
  - (c) Correction order allowing 30 days for the repairs and improvements required to bring the premises into compliance with the provisions of this Chapter. An alternate compliance schedule can be requested per AMC 7.83.070;
  - (d) Notice that the City may abate the nuisance pursuant to this Chapter and that the person(s) responsible shall be liable for the cost of such abatement.

**7.83.040 Prohibited Habitation.**

No person shall inhabit a derelict building or structure, and no owner shall allow any person to inhabit a derelict building or structure ordered vacated by the Police Chief or his/her designee.

**7.83.050 Removal of Placard Prohibited.**

- (1) The Police Chief or his/her designee shall remove a placard whenever the conditions that resulted in the order to vacate the building or structure have been eliminated.
- (2) No person shall deface a placard, and a placard shall not be removed without the approval of the Police Chief or his/her designee.

**7.83.060 Temporary Safeguards.**

Notwithstanding any other provision of this Chapter, whenever, as determined by the Police Chief or his/her designee, a building or structure poses an imminent hazard or incipient hazard as defined in 18.04.070(24). The Police Chief or his/her designee may order necessary work to be performed, including the boarding of openings, to render such building or structure temporarily safe and secure, whether or not proceedings to abate the hazard have been instituted; and shall cause such other action to be taken that the Police Chief or his/her designee deems necessary to meet such condition. All work shall be done in accordance with applicable federal, state, and local regulations and permit conditions.

**7.83.070 Derelict Structure Registration.**

If the Police Chief or his/her designee determines that a building or structure is a derelict structure, the owner shall be required to register the building or structure within ten (10) days of the Police Chief or his/her designee's issuance of an order to register. Registration shall be made on forms provided by the Police Chief or his/her designee, and shall include information relating to the location and ownership of the building or structure, the expected period of its vacancy, a plan for regular maintenance during the period of vacancy, and a plan for its re-occupancy and use, or its remediation or demolition. Any changes in the information required to be provided pursuant to this section shall be given to the Police Chief or his/her designee not more than 30 days of the date of such change. When all conditions making the building or structure a derelict structure have been corrected, the owner shall contact the Police Chief or his/her designee and request an inspection to determine compliance. Said inspections and determination of compliance are separate, and in addition to, those required to meet other regulatory requirements or to satisfy permit conditions.

As part of the registration process, the owner can submit a written request and supporting documentation for an extension of time to bring the derelict structure into compliance. The Police Chief and/or his designee will review the submittal and make determination within 10-days. Whether or not an extension will be granted, and for how long, is at the sole discretion of the Police Chief or his/her designee.

**7.83.080 Derelict Structure Fees.**

- (1) Derelict structure fees will be set by Council resolution.
- (2) Every owner who, after receipt of notice under AMC 7.83.070, fails to register the building or structure within the required time set forth in the notice, or registers the building or structure but allows the building or structure to remain in a derelict condition after timeline granted expires, shall pay a monthly fee as set by council resolution. All fees imposed under this section are to be paid prior to the issuance of any permit required for the demolition, alteration, or repair of the derelict building or structure.
- (3) The Police Chief or his/her designee may, upon a showing by the owner of undue economic hardship, defer payment of the fees imposed by AMC 7.83.080 on an owner-occupied residential building or structure deemed derelict under this Chapter. If the owner complies with AMC 7.83.090 (1), the fees shall be forgiven.

**7.83.090 Refund of Derelict Structure Fees.**

- (1) The Police Chief or his/her designee shall refund derelict building or structure fees imposed under AMC 7.83.080, if the following conditions are met:
  - (a) A timetable for the abatement of the conditions or demolition of the building or structure was submitted by the owner and approved by the Police Chief or his/her designee as provided for this Chapter; and
  - (b) All required permits and related inspections were obtained for the repair or demolition of the building or structure and all permit conditions have been satisfied; and
  - (c) The abatement of the conditions or demolition of the building or structure is completed in the time set forth in AMC 7.83.030, related permits, or any approved extension thereof; and
  - (d) The owner has provided written authorization for the City (within 90 days of notice) to enforce all applicable trespass and illegal camping ordinances and laws.

**7.83.100 Abatement.**

In addition to the penalties as provided for in other portions of this Chapter, the City may abate a derelict building or structure.

Where there is no imminent danger to human life, safety, or property but a derelict building or structure is found to exist, the following abatement procedures will apply:

- (1) Notice shall be posted on the premises where the nuisance exists, directing that the owner and person in charge of the property abate the situation.
- (2) At the time of posting, the Police Chief or his/her designee shall send a copy of the notice by certified mail and first class to:
  - (a) Owner at the last known address as listed in the county tax assessor's office; and
  - (b) The person in charge of the property, if known, and if different from the owner.
- (3) If prior notice of abatement was sent to the owner or person in charge of the property within the preceding 12 months, and ownership or control of the property has not changed and the prior notice was returned as undeliverable or the delivery was refused, then notice can be provided via publication in a newspaper of general circulation at least ten (10) days before abatement action is taken.
- (4) The notice to abate shall contain:
  - (a) A description of the real property, by street address or otherwise, on which the condition, substance, act, or nuisance exists;
  - (b) A description of the condition, substance, act, or nuisance which must be abated;
  - (c) A direction to abate the condition, substance, act, or nuisance within a time specified on the notice;
  - (d) A statement that unless the condition is removed, the City may abate the situation, and the cost of abatement shall be a fee sufficient to cover the direct cost of abatement, plus 30 percent for

- administrative overhead; and this total cost and fees shall be charged to the owner;
- (e) A statement that the owner or person in charge of the property may protest the abatement by giving written notice to the Police Chief or his/her designee within ten (10) days from the date of the notice;
  - (f) A statement that if the cost of abatement is not paid by the owner or person in charge of the property, the cost of abatement may be assessed and become a lien on the property.
- (5) After completion of the posting and mailing, the person posting and mailing the notice shall file this notice with the City Manager or his/her designee stating the date and place of mailing and posting.
  - (6) An error in the name or address of the owner or person in charge of the property or use of the name other than that of the owner or person in charge of the property shall not make the notice void, and in such case the posted notice shall be sufficient.
  - (7) Within ten (10) days after the posting and mailing of the notice to abate, the owner or person in charge of the property shall abate the nuisance specified in the notice, or appeal the Police Chief's decision to the Albany Municipal Court specified in subsection (8) of this section.
  - (8) Any person who receives a notice described in subsection (4) of this section may appeal the Police Chief's decision by filing a notice of appeal with the Police Chief or his/her designee within ten (10) days after the posting and mailing of the notice. The appeal must specify the basis there for.
  - (9) The appeal shall be referred to Albany Municipal Court for a hearing.
  - (10) If the Judge determines that the nuisance does exist, the owner or person in charge of the property shall abate the nuisance within such time as the Judge may grant or, if no specific period of time is granted, within ten (10) days of the Judge's decision.
  - (11) If the nuisance has not been abated within the time allowed, the Police Chief or his/her designee may cause the nuisance to be abated. Within 30 days of the date that abatement is taken, the City shall provide the owner or person in charge of the property with an accounting for costs of abatement.
  - (12) The person charged with the abatement of the nuisance shall have the right to enter upon the property to investigate or cause the removal of the situation.

**7.83.110 Interference with abatement personnel prohibited.**

No person shall interfere with or deny access to any person authorized to enter premises for the purposes of abatement.

**7.83.120 Costs to become a lien.**

- (1) If costs of abatement are not paid within 30 days from:
  - (a) The date of the notice of costs; or
  - (b) If an appeal was timely filed, from the date of Judge's determination of the costs, an assessment of the costs shall be made by resolution and shall be entered in the docket of City liens and recorded with Linn County or Benton County as appropriate. When the entry is recorded in the City lien docket, the assessment shall constitute a lien upon the property subject to the abatement.
- (2) The lien shall be enforced in the same manner as liens for assessment for local improvement districts and shall bear interest at judgment rate as determined by the Oregon Revised Statutes. The interest shall commence running on the date of entry of the lien in the City lien docket.
- (3) An error in the name of the owner or person in charge of the property shall not void the assessment, nor shall a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_

City Clerk

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE (AMC) TITLE 7 BY ADDING A NEW CHAPTER 7.85 TITLED CHRONIC NUISANCE PROPERTY.

WHEREAS, the City of Albany is adding AMC Chapter 7.85, Chronic Nuisance Property, to address repeated unlawful activities occurring on certain real property; and

WHEREAS, a chronic nuisance property can create an unsafe condition in neighborhoods and impacts the livability of the community; and

WHEREAS, Chapter 7.85 will allow public safety personnel to address chronic nuisance properties; and

WHEREAS, civil regulation of chronic nuisance properties will promote and protect the public health, safety, and welfare of City of Albany residents.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 7, Public Peace, Morals, and Safety. AMC Title 7 is hereby amended to add Chapter 7.85 titled Chronic Nuisance Property:

Sections:

- 7.85.010 Declaration of Purpose.
- 7.85.020 Chronic Nuisance Property.
- 7.85.030 Definitions.
- 7.85.040 Police Chief's Determination.
- 7.85.050 Determination of Hearing Officer.
- 7.85.060 Remedies.
- 7.85.070 Multi-Unit Property.
- 7.85.080 Civil Penalty.
- 7.85.090 Penalty and Costs of Review as Lien.
- 7.85.100 Closure of Property.
- 7.85.110 Entering Closed Property.
- 7.85.120 Liability.
- 7.85.130 Violation.

**7.85.010 Declaration of Purpose.**

- (1) Repeated unlawful activities (specifically enumerated in Section 7.85.030, below) occurring on, or resulting from the use of, certain real property within the City create unreasonable disruptions of the peace and may create unsafe condition in the neighborhoods where these real properties are located;
- (2) These repeated unlawful activates degrade neighborhoods;
- (3) Existing state criminal statutes and City ordinances are inadequate to address, control, or remedy the adverse impacts of chronic unlawful activity occurring at these specific real properties;
- (4) Civil regulation of these real properties will provide a remedy to the problems caused by these chronic behaviors and will promote and protect the public health, safety and welfare; and therefore,
- (5) Real properties where those chronic unlawful activities specifically enumerated in Section 7.85.030 below occur, or where those chronic unlawful activities result from the use of the real property, are hereby declared to be public nuisances, and are subject to the abatement procedures and other remedies set forth within this Chapter.

**7.85.020 Chronic Nuisance Property.**

- (1) Any property within the City that becomes a chronic nuisance property, as defined herein, is in violation of this Chapter and subject to its remedies.
- (2) Any person who permits property under his or her ownership or control to be a chronic nuisance property, as defined herein, shall be in violation of this Chapter and subject to its remedies.

**7.85.030 Definitions.**

- (1) "Abate" includes affirmative actions to remove, to stop, or to prevent a nuisance property but is not limited to:
  - (a) Restricting or limiting noise, loitering, parking, or access to the property, including posting the property with signs indicating such restrictions;
  - (b) Closing the property for not less than 30 days or more than 6 months; or
  - (c) Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition, or property constituting a nuisance.
- (2) "Chronic Nuisance Property" is:
  - (a) Property upon which the owner permits three or more separate incidents listed below to occur within any 30-day period, or five or more separate incidents listed below within any 90-day period, in which at least one separate incident results in a citation or arrest;
  - (b) Property, the use of which has a causal relation to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, in which at least one incident results in a citation or arrest, and all of which occur within 100 feet of the boundary line of the subject property;
  - (c) Any combination of separate incidents as specified in Section 7.85.030(2) (a) or (b) which amounts to three or more separate incidents listed below occurring within any 30-day period or five or more separate incidents listed below within any 90-day period, in which at least one incident results in a citation or arrest; or
  - (d) For the purposes of 7.85.030(2) the following offenses shall constitute incidents which would support a finding of chronic nuisance property;
    - (1) Harassment as defined in ORS 166.065(1)(a),
    - (2) Intimidation as defined in ORS 166.155 through 166.165,
    - (3) Disorderly conduct as defined in ORS 166.025 and AMC 7.08,
    - (4) Assault or menacing as defined in ORS 163.160 through 163.190,
    - (5) Public indecency as defined in ORS 163.465,
    - (6) Prostitution or related offenses as defined in ORS 167.007 through 167.017,
    - (7) Provision of alcohol to a minor or to a person visibly intoxicated as defined in ORS 471.410,
    - (8) Offensive littering as defined in ORS 164.805,
    - (9) Criminal trespass as defined in ORS 164.245 through 164.265,
    - (10) Theft by receiving as defined in ORS 164.095,
    - (11) Arson or related offenses as defined in ORS 164.315 through 164.335,
    - (12) Possession, manufacturing, or delivery of a controlled substance or related offenses as defined in ORS 475.906 through 475.912 and 475.940 through 475.979,
    - (13) Illegal gambling as defined in ORS 167.122 through 167.127,
    - (14) Criminal mischief as defined in ORS 164.345 through 164.365,
    - (15) Firing or discharge of a firearm as defined in AMC 7.16.030,
    - (16) Unnecessary noise as defined in AMC 7.08.050,
    - (17) Sexual abuses as defined in ORS 163.415 through 163.427,
    - (18) Sexual misconduct as defined in ORS 163.445,
    - (19) Frequenting a place where controlled substances are used as defined in ORS 167.222,
    - (20) Keeping junk and trash as defined in AMC 7.84.030,
    - (21) Menacing as defined in ORS 163.190, 166.155, and 166.165,

- (22) Reckless endangering as defined in ORS 163.195,
  - (23) Any attempt to commit (as defined in ORS 161.405), and/or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors, or conduct.
- (3) "Control" means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.
  - (4) "Good cause" means circumstances beyond the ability of a person acting with reasonable care and diligence to control.
  - (5) "Incident" means an occurrence of one of the nuisance behaviors set forth in Section 7.85.030(2)(c) as described in:
    - (a) Personal observation of a law enforcement officer, or
    - (b) A determination by a law enforcement officer after an investigation that there are reasonable grounds to conclude that the alleged incident did, in fact, occur.
  - (6) "Owner" means any person, agent, firm, or corporation having a legal or equitable or management interest in a property. Owner includes, but is not limited to;
    - (a) A mortgagee in possession in whom is vested:
      - (1) All or part of the legal title to the property; or
      - (2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises;
 or
    - (b) A person who has the legal authority to control or to obtain authority to control what occurs on that property.
  - (7) "Permit" means to suffer, allow, consent to, or acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
  - (8) "Property" means any residential property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof, whether permanent or not.
  - (9) "Police Chief" means the official responsible for enforcement of State and City laws or departmental designee.
  - (10) "Structure" means that which is built or constructed, an edifice or building of any kind including units thereof or mobile homes, any of which is an addition to or a fixture on real property.

**7.85.040 Police Chief's Determination.**

- (1) If the Police Chief suspects that property may be a chronic nuisance, the Police Chief may notify the owner and the owner's registered agent, if known, in writing. In deciding whether to proceed, the Police Chief shall consider whether the owner has reported the incidents and otherwise acted responsibly and whether proceeding would discourage future reporting and cooperation in discouraging unlawful behavior. The notice shall contain the following information:
  - (a) The street address or description sufficient for identification of the property;
  - (b) That the Police Chief is considering whether the property is a chronic nuisance property together with a concise description of the information upon which the Police Chief is relying. If any of the incidents relied on occurred on property other than that which is subject of the notice, the notice may include a concise description of the location and the causal relationship between the subject property and the incident; and
  - (c) A direction that the owner has 15 days from the date of mailing the notice, to provide information to the Police Chief demonstrating that the property is not a chronic nuisance, inform the Police Chief of the actions the owner intends to take to address the allegations, or indicate good cause as to why the owner cannot do so.

- (2) If the owner fails to respond or to demonstrate to the Police Chief that further action should not be taken, the Police Chief may issue a determination of chronic nuisance and direct the owner to abate the nuisance within 30 days, or show good cause to the Police Chief why the owner cannot meet the deadline. The notice shall state that:
  - (a) If the nuisance is not abated within the 30-day period, and good cause for failure to abate is not shown, the Circuit Judge may order abatement or closure of the property with appropriate conditions. The Circuit Judge may also employ any other remedy deemed by the judge to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint in a court of competent jurisdiction;
  - (b) If the Circuit Judge orders the property owner to take some action to abate the nuisance, the owner may be required to pay to the City a civil penalty of \$250.00 a day for each day the owner fails to take action;
  - (c) If the Circuit Judge orders the owner to abate the nuisance, the owner may be required to pay a civil penalty of \$500.00 per incident for subsequent incidents, as defined by Section 7.85.030(2)(c), occurring on the property within six months of the order;
  - (d) Permitting chronic nuisance property is a violation of this Chapter; and
  - (e) The above remedies are in addition to those otherwise provided by law.
- (3) Service of the notice to the property owner provided for in this Chapter is completed upon delivery in person or upon mailing the notice by certified mail addressed to:
  - (a) The owner's registered agent, if any is known; or
  - (b) The owner at the address of the property believed to be a chronic nuisance property, or to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Police Chief.
- (4) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon delivery in person or upon mailing the notice first class addressed to "occupant" of each unit of the property believed to be a chronic nuisance property.
- (5) In addition, a copy of the Police Chief's determination that the property is a chronic nuisance shall be posted on the main entrance of the property in a conspicuous manner.
- (6) The failure of any person or owner to receive actual notice of the determination by the Police Chief shall not invalidate or otherwise affect the proceedings under this Chapter.

**7.85.050 Determination of Hearing Officer.**

- (1) If the Police Chief determines that the owner has failed to abate the chronic nuisance or demonstrate good cause as to why the owner cannot do so, the Police Chief may refer the matter to the Circuit Judge for a hearing. The Circuit Judge may give notice of the hearing to the owner and occupants, if different from the owner, and post notice of the hearing on the main entrance of the property. At the time set for the hearing, the owner and occupants may appear and be heard. The Circuit Judge may determine *de novo* whether the property is a chronic nuisance property, whether the nuisance has been abated, and whether the owner has shown good cause or otherwise has a valid defense.
- (2) The City has the initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property. If the City is relying on an incident that occurred on property other than the property that is the subject of the chronic nuisance determination, the City shall demonstrate some causal relationship between activities occurring on the property and the incident. The activities must have contributed to, but need not be the sole or predominant cause of the incident. Evidence demonstrating a causal connection may include, but is not limited to:
  - (a) That the owner knew or reasonably should have known that the resident or other person associated with the property would engage in conduct listed in Section 7.85.030(2); or
  - (b) Activities on the subject property that encouraged, engendered, promoted, contributed to, or otherwise made the incident more likely to occur.

- (3) It shall be an affirmative defense to an action under this Chapter that the owner could not, in spite of the exercise of reasonable care and diligence, control the activities on the subject property that constituted the incident or made the incident more likely to occur or otherwise remedy the situation leading to the finding that the property is a chronic nuisance. The owner has the burden of proving this defense by a preponderance of the evidence. The action shall be dismissed if the Circuit Judge determines that the owner has proven this defense.
- (4) If the owner can prove by a preponderance of the evidence that the owner is unable to remedy the chronic nuisance within the time frames required by this Chapter, the Circuit Judge may elect to grant more time and continue its final determination as the Circuit Judge determines is just.

**7.85.060 Remedies.**

- (1) If the Circuit Judge determines that property is a chronic nuisance and the owner has not demonstrated a valid defense, the Judge may order that the nuisance be abated or close and secure the property against all use and occupancy for a period of not less than 30 days and not more than 6 months.
- (2) Prior to issuing any order of abatement or closure, a Circuit Judge may consider the following factors:
  - (a) The actions taken by the owner(s) to mitigate or correct the problem at the property;
  - (b) The financial position of the owner;
  - (c) Whether the problem at the property was repeated or continuous;
  - (d) The magnitude or gravity of the problem;
  - (e) The level of cooperation of the owner in addressing the problem, including whether the owner reported the incidents;
  - (f) The time and cost to the City in attempting to correct the problem; and
  - (g) Any other factor deemed relevant by the Circuit Judge. These factors are guidelines to inform the decision-making process, but the presence or absence of any factors shall not control the decision by the Circuit Judge.
- (3) The order may include conditions under which abatement or closure is to occur.
- (4) Upon a determination by the Circuit Judge that the property is a chronic nuisance, the Police Chief may file a notice of the proceedings to be placed with the county property records.
- (5) The remedies in this section are in addition to those otherwise provided by law. The City may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint in a court of competent jurisdiction.

**7.85.070 Multi-Unit Property.**

- (1) Except as provided in Section 7.85.070(2), in the case of multi-unit residential property, such as apartment complexes under one ownership, the chronic nuisance determination and closure remedy shall be directed only to the unit or units that are the source or location of the incidents.
- (2) A chronic nuisance determination and remedy may be applied to multiple units, up to and including the entire property, if the Circuit Judge determines that:
  - (a) The incident occurred in the common areas of the property or otherwise are not reasonably attributable to a particular unit;
  - (b) The nature or scope of the incidents is such that they cannot reasonably be attributed to a particular unit; or
  - (c) Incidents continue to occur despite previous imposition of remedies on specific units and the owner has demonstrated an inability or unwillingness to mitigate or correct the nuisance.

**7.85.080 Civil Penalty.**

- (1) If the Circuit Judge finds that a property is a chronic nuisance property and orders the owner to take some action to abate the nuisance, the Judge may impose upon the owner a civil penalty of up to \$250.00 per day, payable to the City, for each day after the deadline that the owner fails to take the action ordered.
- (2) If the Circuit Judge orders the owner to abate the nuisance, the Judge may impose upon the owner a civil penalty of \$500.00 per incident for subsequent incidents, as defined by Section 7.85.030(2), occurring on the property within six months of the order.
- (3) A civil penalty is assessed by issuing written notice of penalty to the owner of the chronic nuisance property and the owner's registered agent, if any is known. The notice shall contain the following information:
  - (a) The street address or description sufficient for identification of the property;
  - (b) That the Circuit Judge has found that the owner has failed to take the action required by the Judge, or that after an order to abate the nuisance, a subsequent nuisance activity has occurred, with a concise description of the conditions leading to the Judge's findings;
  - (c) That the owner may request a hearing on the validity of the assessment of the penalty by filing a request with the Circuit Judge within 14 days of the notice. The request must specifically state the grounds upon which the owner believes that the penalty is not valid;
  - (d) The penalty is final when 14 days have elapsed from the date of the notice if a request for hearing is not filed, or upon entry of an order upholding the penalty by the Circuit Judge after hearing.
- (4) The Circuit Judge shall not impose more than ten (10) days of civil penalties at a time. The Judge may impose additional civil penalties after ten (10) days by reissuing notice of imposition of penalties.

**7.85.090 Penalty and Costs of Review as Lien.**

- (1) The Police Chief may forward a statement of the assessments for penalties, cost of abatement and, if ordered by the Circuit Judge, hearing costs and attorney's fees to the Finance Director. The Finance Director shall notify the owner by mail of the sum of money due to the City. If the sum is not paid within 45 days from the billing date, the Director shall file with the Circuit Judge a statement of the sum due, plus an additional charge of thirty (30) percent to cover administrative expenses. The owner shall be notified by mail of the time and place the Circuit Judge will consider the statement of penalties and costs, and will be given a reasonable opportunity to be heard in objection thereto. The Judge will only determine if the statement of penalties and cost is correct, and will not reconsider the decision as to whether the penalties and costs of the hearing should be imposed. The Judge shall determine the correct amount of penalties and cost and shall declare the same to be a lien upon the property involved, to be entered in the minor lien docket and enforced against the property, in the same manner provided for enforcement of liens for street improvement.
- (2) Nothing in this Section shall be construed as restricting the authority of the City to enter into a settlement of the dispute, including waiving some or all amounts due to the City.

**7.85.100 Closure of Property.**

If the Circuit Judge's order of closure of a property is not appealed, or if the Judge upholds an appeal of an order which has been challenged, the City shall take steps to physically secure the property against all use, and post conspicuous notices that the property has been closed. All costs reasonably incurred by the City in securing the property shall be made an assessment lien upon the property in the manner described in AMC 7.85.100. Costs may include but are not limited to staff time and materials. Prior to physically closing the property, the City may, but is not required to, provide the owner with a brief opportunity to physically secure the property against all use at the owner's expense.

**7.85.110 Entering Closed Property.**

It is unlawful for any person to enter, use, or remain in or on property that has been ordered closed pursuant to this Chapter.

**7.85.120 Liability.**

Nothing herein shall be relied on or construed as establishing any City responsibility, obligation or liability to any third party, for damages or otherwise arising from the actions or inactions of the City in applying this Chapter. Nothing herein lessens or otherwise alters the property owner's responsibility to third parties arising from use and condition of the property.

**7.85.130 Violation.**

Violation of any of the provisions of this Chapter is a misdemeanor punishable as provided by AMC 1.04.010.

Passed by Council: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_

City Clerk