

*For: Monday, February 24, 2014, City Council Meeting*

## **Advance Packet Information**

Dated: February 14, 2014

Included in this packet is documentation to support the following Agenda items:

### **ORDINANCES**

1. Ordinance amending Brookings Municipal Code Chapter 13.10, Sewer Use Regulations. [PWDS, pg. 2]
  - a. Chapter 13.10 revisions [pg. 3]
  - b. Ordinance 14-O-725 [pg. 21]
2. Ordinance amending Brookings Municipal Code Section 8.15.020, Control of Domestic Animals. [Public Safety, pg. 29]
  - a. Ordinance 14-O-729 [pg. 31]
  - b. Revisions to BMC Section 8.15.020 [pg. 33]
  - c. County dog control regulations [pg. 35]
  - d. Related ORS sections [pg. 42]
3. Ordinance repealing Brookings Municipal Code Chapter 9.15, Tobacco Sales. [City Manager, pg. 48]
  - a. Ordinance 14-O-728 [pg. 50]
  - b. BMC Chapter 9.15 [pg. 51]
  - c. "Access to Tobacco and Youth Possession of Tobacco, excerpt from the Department of Health Services website. [pg. 55]

\*Obtain Public Comment Forms and view the agenda and packet information on-line at [www.brookings.or.us](http://www.brookings.or.us), or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least ten days advance notification. Please contact 541-469-1102 if you have any questions regarding this notice.

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: February 24, 2014

Originating Dept: PWDS

4 Lauralee Snook  
Signature (submitted by)  
[Signature]  
City Manager Approval

---

Subject: Adoption of Ordinance 14-O-725 to implement the approved amendments to Brookings Municipal Code (BMC) Title 13.10, Sewer Use Regulations.

Recommended Motion:

Motion to adopt Ordinance 14-O-725, amending Chapter 13.10, Sewer Use Regulations.

Financial Impact: The proposed Sewer Lateral Rebate Program will have a controlled impact based on budget allowance for this program. There will be some offset to this cost in savings attributable to the reduction of ground water being processed at the Waste Water Treatment Plant (WWTP).

Background/Discussion: This matter was discussed at the January 27<sup>th</sup> Council Meeting, the proposed changes were approved and Staff was directed to bring the request for ordinance adoption to the next Council meeting.

**Chapter 13.10**

Significant revisions to Chapter 13.10, Sewer, are intended to reduce the amount of inflow and infiltration (I/I) of ground water to the Wastewater Treatment Plant, thereby reducing the cost of sewage treatment overall.

1. Requiring inspection of older existing laterals, prior to a reconnection or approval of a building permit that would increase either the size of the building, intensity of the use, or is of such a significant nature that repair/replacement of the lateral or connection would be insignificant toward the cost of the project. Inspection may also be required by Site Plan Committee in the case of laterals that have a history of backups or other symptoms of failure. This would identify pipes that are in failure and prevent them from adding to the I/I load at the plant.
2. The Sewer Rebate Program encourages property owners who are already connected and contributing to the I/I issue to repair their lateral with the City sharing the cost of that portion located within the right of way.
3. Clarifies that the City will only accept City maintained sewer laterals in a right of way or easement if the lateral and connection is constructed to meet current City of Brookings Standard Specifications.
4. Clarifies the City's purview over laterals in a right of way or easement and the County Plumbing Inspectors purview on approving laterals on private property.
5. An additional revision, which may appear significant, changes the distance at which sewer is considered available from 300 to 200 feet. This is to mirror language in the State Plumbing Code.

Attachment(s):

- a. Chapter 13.10 revisions
- b. Ordinance 14-O-725

## **Title 13 PUBLIC SERVICES**

### **Chapter 13.10 SEWER USE REGULATIONS**

#### Sections:

#### Article I. Definitions

13.10.010 Definitions.

#### Article II. Public Sewer System

13.10.020 Sewer system established, controlled.

13.10.030 Council to make rules.

13.10.040 Sewer service.

13.10.050 Prohibition of service.

#### Article III. Use of Public Sewers Required

13.10.060 Owner required to connect to public sewer.

13.10.070 Unlawful to deposit unsanitary waste.

13.10.080 Treatment required.

13.10.090 Unlawful to construct facility for disposal of sewage.

13.10.100 Unlawful to damage equipment of sewage works.

#### Article IV. Public Building Sewers and Connections

13.10.110 Permit required.

13.10.120 Application form.

13.10.130 ~~Inspection required.~~

13.10.140 ~~Approval by public works director required.~~ **Inspection required**

13.10.150 Information required.

13.10.160 Classes of sewer permits.

13.10.170 Conditions for issuance of permits.

13.10.180 Building sewer extension.

13.10.190 Separate sewer for each building required.

13.10.200 Conformity to city standards.

13.10.210 ~~Elevation of building sewer.~~

13.10.220 Groundwater or surface runoff.

13.10.230 Fees and charges for public sewer connection.

- 13.10.240 Installation requirements.
- 13.10.250 As-constructed drawings required.
- 13.10.260 Responsibility for sewer laterals.
- 13.10.265 *Sewer lateral rebate program***
- 13.10.270 Connections outside city limits.
- 13.10.280 Sewer main extensions.

#### Article V. Use of the Public Sewers

- 13.10.290 Discharges – Waters.
- 13.10.300 Discharges – Storm sewer use.
- 13.10.310 Discharges – Prohibited substances.
- 13.10.320 Discharges – Harmful substances.
- 13.10.330 City actions.
- 13.10.340 Pretreatment equipment approval.
- 13.10.350 Grease, oil and sand interceptors.
- 13.10.360 Pretreatment devices – Installation and maintenance.
- 13.10.370 Control manholes.
- 13.10.380 Flow measuring and monitoring.
- 13.10.390 Test methods.
- 13.10.400 Sewer line modifications – Plans approval.

#### Article VI. Admission of Industrial Wastes into Public Sewers

- 13.10.410 Approval required.
- 13.10.420 Industrial user designation.
- 13.10.430 Pretreatment.
- 13.10.440 Submission of information.
- 13.10.450 Special agreements.

#### Article VII. Infiltration and Inflow

- 13.10.460 Problem contributors identified.
- 13.10.470 Grace period.
- 13.10.480 Corrective actions required.
- 13.10.490 Service termination.
- 13.10.500 Nuisance declaration.

#### Article VIII. Private Sewage Disposal

- 13.10.510 Authorized.
- 13.10.520 City approval required.
- 13.10.530 Participation in future public improvements.

- 13.10.540 State permitting authority.
- 13.10.550 Standards.
- 13.10.560 Public sewer connection required.
- 13.10.570 Operation – City expense.
- 13.10.580 Additional state requirements.
- 13.10.590 Discontinuance of use.

#### Article IX. Private Building Sewers and Connection

- 13.10.600 Connection options.
- 13.10.610 Mobile home **manufactured dwelling** parks, trailer parks, campgrounds, etc.
- 13.10.620 Testing.
- 13.10.630 Costs, expenses.

#### Article X. Powers and Authority of Inspectors

- 13.10.640 Authorized officials.
- 13.10.650 Owner liability.
- 13.10.660 Easement work.

#### Article XI. Penalties

- 13.10.670 Violation notice – Termination.
- 13.10.680 Penalties.

#### Article I. Definitions

##### **13.10.010 Definitions.**

##### ***“AHJ” authority having jurisdiction***

“Approving authority” shall mean the mayor and the council of the city of Brookings, or its duly authorized representative.

“BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees centigrade, expressed in milligrams per liter.

“Building” shall mean any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

"Building drain" shall mean that part of the lowest horizontal piping of a drainage system which received the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

"Building sewer" shall mean the extension from a building of the building drain to the public sewer or other place of disposal.

"Chlorine requirement" shall mean the amount of chlorine, in parts per million by weight, which must be added to sewage to produce a specified residual chlorine content, or to meet the requirements of some other objective, in accordance with procedures set forth in "standard methods."

"City" shall mean the city of Brookings, Oregon, as represented by the city manager or his designee.

"City engineer" shall mean the city engineer of the city of Brookings, Oregon, or the city's duly authorized agent.

"Commercial building" shall mean all building or premises used for any purpose other than a dwelling unit having a sewage discharge of a kind, type and volume similar to a single-family dwelling unit or multiunit residential structure including a ~~mobile home~~ **manufactured dwelling** park or recreational vehicle park, but not an industrial waste contributor. ~~Any building or structure, which has been constructed or altered to provide for two or more families or households, or which has been constructed or altered to accommodate travelers or transients, including mobile homes or recreational vehicles, shall be considered a "commercial building."~~

"Commercial user" shall mean the owner, occupant or lessee of any premises used for commercial or business purposes which is not an industrial user as defined in this article.

"Council" shall mean the city council of the city of Brookings, Oregon.

"Design life" shall mean the period during which a treatment works is planned and designed to be operated.

"Domestic user" shall mean any person who discharges only domestic sewage, or the owner of property which is connected to the public sewer system of the city.

"Dwelling unit" shall mean each single-family dwelling unit used for permanent human habitation, including ~~mobile~~ **manufactured** homes and recreational vehicles if so used.

"Garbage" shall mean the residue from the preparation and dispensing of food, and from the handling, storage, and sale of food products and produce.

"Ground garbage" shall mean the residue from the preparation, cooking, and dispensing of food that has been shredded to such degree that all particles will be carried freely in suspension under the flow

conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

"Industrial unit" shall mean any business, occupation or enterprise having a sewage discharge which, by reason of the manufacture or industrial process involved or through services rendered, is any volume in excess of a single-family residence or is of a kind or type dissimilar to that of a single-family residence because of the discharge of chemicals or by-products of the nonresidential or industrial process.

"Industrial user" shall mean any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual 1972, Office of Management and Budget, as amended and supplemented under one of the divisions cited in 40 CFR, Part 35, Section 35.2005[19].

"Industrial wastes" shall mean any nondomestic liquid, gaseous substance or semi-solid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from sanitary sewage), and the contents of chemical toilets, septic tanks, and wasteholding tanks.

"Infiltration" shall mean any water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow.

"Inflow" shall mean any water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

"Manufactured home **dwelling**" shall mean a transportable single-family dwelling conforming to the Manufactured Housing Construction and Safety Standards Code (also referred to as the HUD code). ~~but is not regulated by the Oregon State Structural Specialty Code and Fire Life Safety Regulations, latest edition, and intended for permanent occupancy so that it may be used with or without a permanent foundation.~~

~~"Mobile home" shall mean any manufactured unit built on a chassis designed to be used as a permanent or resident dwelling, with or without a permanent foundation, and may include a recreational vehicle (RV) if such RV is so used.~~

"Modular home" shall mean a transportable single-family dwelling conforming to the Oregon State Structural Specialty Code and Fire Life Safety Regulations, latest edition, and intended for permanent occupancy ~~so that it may be used with or without a permanent foundation.~~

"Multifamily dwelling unit" shall mean any building or dwelling unit as herein defined, designed or modified to be used as two or more dwelling units.

"Operation and maintenance" shall mean activities required to assure the dependable and economical function of sewage disposal works:

1. "Maintenance" means preservation of functional integrity and efficiency of equipment and structures. This includes preventative maintenance, corrective maintenance and replacement of equipment.
2. "Operation" means control of the unit processes and equipment which make up the sewage disposal works. This includes administration, financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.
3. "Operation and maintenance" shall also mean "replacement."

"Parts per million" shall mean a weight-to-weight ratio; the parts per million value multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water.

"Person" shall mean any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, government agency, or other entity.

"pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Private sewer disposal system" shall mean a nonpublic sewer disposal system approved by the Oregon Department of Environmental Quality (DEQ), and operated and maintained in conformity with requirements of DEQ.

"Public sewer" shall mean a sanitary sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

"Public works director" shall mean the public works director for the city of Brookings or the city's authorized representative.

"Recreational vehicle" shall mean a self-propelled or towable mobile designed used for temporary dwelling purposes by nonresident travelers.

"Recreational vehicle dumping station" shall mean a facility connected to a public sewer which accepts liquid wastes dumped from holding tanks of recreational vehicles such as travel trailers, motor homes, campers and other mobile living units where such wastes pass into the public sewer system, regardless of whether such wastes are accepted by the recreational vehicle dumping station operator with or without charge.

“Recreational vehicle park” shall mean a lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

“Replacement” shall mean obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the sewage disposal works to maintain the capacity and performance for which such works were designed and constructed.

“Residence” shall mean buildings, structures and ~~mobile homes~~, manufactured or modular **units**, including recreational vehicles, that are constructed and/or used primarily for single-family residential purposes.

“Sanitary sewer” shall mean a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

“Septic tank” shall mean a watertight receptacle which receives the discharge of sewage from a sanitary private drainage system and which is so designed, constructed and operated as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption facility, all of which must be located upon and within the site or property which it serves.

“Service charge” or “user charge” shall mean the monthly fee charged for service to all users of the public sewer system.

“Sewage” shall mean the water-carried human and animal wastes from residences, buildings and industrial establishments or other sources together with such groundwater infiltration and surface water as may be present.

“Sewage disposal works” **also referred to as “treatment works”** shall mean all facilities for collecting, transporting, pumping, treating, and disposing of sewage and industrial waste, including sewerage as well as the sewage treatment plant.

“Sewage treatment plant” shall mean an assemblage of devices, structures, and equipment for treating sewage and industrial wastes and may be used synonymously with the term “wastewater treatment plant.”

“Sewer user” shall mean every person using a public sewer who owns a building connected to a public sewer, or who has a residence, commercial building, or industry within ~~300~~ **200** feet of an available sewer, and who puts to use a sewer which requires sewage facilities, though not connected therewith.

“Sewerage” shall mean the system of sewers and appurtenances for the collection, transportation, and pumping of sewage and industrial wastes.

“Shall” is mandatory; “may” is permissible.

“Standard methods” shall mean the examination and analytical procedures set forth in the most recent edition of “Standard Methods for the Examination of Water, Sewage, and Industrial Wastes,” published jointly by the American Public Health Association, the American Water Works Association, and the Federation of Sewage and Industrial Wastes Associations.

“Storm sewer” shall mean a sewer that carries storm, surface, and groundwater drainage, but excludes sewage and industrial wastes.

“Surcharge” shall mean a charge or assessment in addition to the service or user charge levied for a specific purpose.

“Suspended solids” shall mean solids that either float on the surface of, or are in suspension in water, sewage, or industrial waste, and which are removable by a laboratory filtration device. Quantitative determination of suspended solids shall be made in accordance with procedures set forth in “standard methods.”

~~“Treatment works” shall have the same meaning as “Sewage disposal works.”~~

“Useful life” shall mean the period during which a treatment works operates.

“User charge” shall mean a charge levied on users of a treatment works for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such works, and the term “user charge” shall have the same meaning and may be used synonymously with the term “service charge.”

“Wastewater” shall mean liquid or water-carried pollutants including any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the publicly owned treatment works.

“Wastewater treatment plant” shall mean the same and may be used synonymously with the term “sewage treatment plant.” [Ord. 91-O-430.C § 2; Ord. 88-O-430 Art. I.]

## **Article II. Public Sewer System**

### **13.10.020 Sewer system established, controlled.**

A. Authorization. Pursuant to the City Charter, the city of Brookings is hereby authorized and empowered by and through its city council, and in the name of the city, to purchase or build, construct, maintain, extend and repair one or more municipal sewer systems, either within or without, or partially within and partially without, the corporate limits of the city, and to do all necessary things in connection therewith.

B. Scope. The city and all customers receiving services from the sewer system, whether inside or outside the city limits, are bound by these rules and regulations. [Ord. 88-O-430 Art. II § 1.]

#### **13.10.030 Council to make rules.**

The rules and regulations governing consumers of sewer from said municipal sewer system, the rates to be charged such consumer, and the policy and manner of operating, managing and maintaining such municipal sewer system, shall be fixed, formulated and adopted by the city council. [Ord. 88-O-430 Art. II § 2.]

#### **13.10.040 Sewer service.**

A. Sewer service may only be extended to properties having frontage on a public sewer main which has been built to current city standards to serve the requesting property and which is so constructed and extended as to provide service to adjacent property and which has been dedicated to and accepted by the city together with necessary easement and rights-of-way therefor, all in conformance with the requirements of this chapter and other relevant ordinances, except as provided in subsection (D) of this section.

B. In order to ensure compatibility of utility systems and improvements within both the city and the urban growth area of the city, sewer service extensions may be permitted to properties which are in all respects developed in accordance with adopted city development standards and regulations and with the Charter and ordinances of the city.

C. For purposes of this chapter, and for indivisible single lots or parcels existing on the effective date of the ordinance codified in this chapter, frontage on a public sewer main may be satisfied by means of either an easement or land in fee simple abutting a public right-of-way containing the sewer main. Sewer service to a single lot or parcel which has been created prior to adoption of the amendment of the ordinance codified in this chapter may be provided by a sewer service lateral but service to more than a single lot or to such parcels which are divisible into more than a single lot shall be provided by means of the extension of a public sewer main meeting current adopted city standards, with provision for dedication of appropriate and necessary public utility easements for installation and maintenance purposes.

D. Where the installation of a public sewer main would pose substantial risk to the sewer main or to surrounding properties as a result of identified geological hazard, the city council may approve the installation of sewer service to properties which do not have frontage on a public sewer main in accordance with such terms and conditions as may be recommended by the city's engineer to minimize risk to city facilities and surrounding properties, and such approval may specify conditions of approval which must be satisfied prior to connection to the city's sewer system. [Ord. 91-O-430.B §§ 1, 2; Ord. 89-O-456 § 1; Ord. 88-O-430 Art. II § 3.]

#### **13.10.050 Prohibition of service.**

When, in the judgment of the city, the sewer lines and appurtenances or the treatment plant of the city are of insufficient capacity or size or cannot reasonably be expected to provide safe and dependable treatment of sewage, then applications for additional sewer service shall be refused. The city council may from time to time designate sections of the city or the area served by the sewer system in which additional

sewer services shall be prohibited until such time as conditions preventing the safe collection and treatment of sewage shall have been corrected. [Ord. 88-O-430 Art. II § 4.]

### **Article III. Use of Public Sewers Required**

#### **13.10.060 Owner required to connect to public sewer.**

Except as set forth in this section, the owner and the occupant of all houses, buildings, or properties used for human occupancy, employment, commerce, industry, recreation, or other purposes, situated within or served by the city treatment works and abutting any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided, that said public sewer is within 300 **200** feet of the property line; except that, after the initial construction of the public treatment works is completed, connection to such facilities shall be completed within 12 months after official notice to do so. The city council may set a shorter time for correction or connection to public sewer for users having problems which are determined to be a threat to public health, safety or general welfare.

A. The sewer connection requirement described above shall not be applicable if topographic, manmade features or intervening properties (where the subject property does not front on a public sewer) make connection physically impractical.

B. When a public sewer is extended to be within 300 **200** feet of a property in order to serve an upstream development or property, the owner and/or occupant of the property shall not be required to connect to the public sewer system if the property has a fully functioning septic system. The property shall thereafter connect to the public sewer when the property owner or occupant desires to connect; when the existing septic system fails; or when it is identified as a public health hazard. If connection to the public sewer is made within the line extension payback period, BMC 13.10.280(E) shall apply. ***Prior to connection the applicant must provide evidence that the septic system has been properly abandoned and accepted as such through the Curry County Public Services Department.***

C. The exceptions to the public sewer connection requirements contained in subsections (A) and (B) of this section shall not apply to local improvement or assessment districts established for the purpose of constructing public sewers within said district. [Ord. 93-O-430.D § 2; Ord. 88-O-430 Art. III § 1.]

#### **13.10.070 Unlawful to deposit unsanitary waste.**

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city of Brookings, or within the service area of said city, any human or animal excrement, garbage, or other objectionable waste. [Ord. 88-O-430 Art. III § 2.]

#### **13.10.080 Treatment required.**

It shall be unlawful to discharge to any natural outlet within the city of Brookings any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter. [Ord. 88-O-430 Art. III § 3.]

**13.10.090 Unlawful to construct facility for disposal of sewage.**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, cesspool, or other facility intended or used for the disposal of sewage. A private sewage disposal system may be installed as hereinafter provided. [Ord. 88-O-430 Art. III § 4.]

**13.10.100 Unlawful to damage equipment of sewage works.**

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest by law enforcement personnel. [Ord. 88-O-430 Art. III § 5.]

**Article IV. Public Building Sewers and Connections**

**13.10.110 Permit required.**

It shall be unlawful for any person to open, uncover, or in any manner make connection with any sewer line of the city, or to lay drain or sewer pipes on any premises or in any street or alley in the city or in any area served by the city treatment works without first applying for and obtaining a permit therefor from the ~~city-~~ **authority having jurisdiction (AHJ)**. The city ~~may~~ **shall** issue a permit to a property owner or his agent who certifies on his application that the work covered by the permit will be performed by himself or his agent, **or, in the case of work located in the public right of way and a part of the City infrastructure**, by a licensed, qualified contractor, ~~either of which installation shall be inspected and approved by the city. However, if it appears to the public works director that the property owner or his agent is not qualified to perform the work, taking into account the character, complexity and potential hazards of the work, and the knowledge and experience of the property owner who will perform it, he may require that all or any portion of the work which, in his judgment, such property owner or his agent is not qualified to perform, be performed by a qualified licensed plumbing contractor.~~ [Ord. 88-O-430 Art. IV § 3.] [Ord. 88-O-430 Art. IV § 1.]

**13.10.120 Application form.**

~~In either case,~~ The owner or his agent shall make application on a special form furnished by the city ~~AHJ~~. A permit and inspection fee ~~and a building sewer connection permit~~ in amounts to be established from time to time by resolution of the city council shall be paid to the city at the time the application is filed for connection ~~(of a building sewer) to a service lateral or a~~ **to the public sewer for all work to occur in the public right of way and any applicable system development charges. Associated work that is to occur on private property is to be permitted and inspected through the Public Services Department of Curry County.** ~~and for extensions or additions to an approved private sewer.~~ [Ord. 88-O-430 Art. IV § 2.]

**~~13.10.130 Inspection required.~~**

**~~13.10.140 Approval by public works director required.~~ *Inspection required***

~~The~~ *Inspection and* written approval of the public works director *or designee* shall be obtained before any work covered by this chapter is covered or concealed. [Ord. 88-O-430 Art. IV § 4.]

**13.10.150 Information required.**

As part of the application for a permit, the property owner or his agent ~~shall~~ *may be required to* provide the following:

- A. Copies of plot plan to scale and specifications in duplicate, including, but not limited to, lot dimensions, location of building or structure or other improvements to be served;
- B. Location of existing septic tanks, drain fields and building sewer lines;
- C. Location of water service lines and/or wells, and other underground utilities;
- D. Location of driveways;
- E. Location, depth, grade and material of proposed building sewer;
- F. Plans and specifications for materials and installation;
- G. Purpose for which the sewer connection is to be used, i.e., residential, multifamily residential, commercial, industrial, etc.;
- H. Point of proposed connection of the new or existing building sewer to the building drain. [Ord. 88-O-430 Art. IV § 5.]

**13.10.160 Classes of sewer permits.**

There shall be two classes of sewer permits:

- A. For residential and commercial service; and
- B. For service to establishments producing industrial wastes. [Ord. 88-O-430 Art. IV § 6.]

**13.10.170 Conditions for issuance of permits.**

Every permit shall be issued under the following conditions:

- A. Construction of the building sewer shall start within four months from the date of issuance of the permit.
- B. Construction of the building sewer shall be completed within 12 months from the date of issuance of the permit.

C. If the proposed connection or pipe installation does not violate any provision herein and does not violate any other laws of the city, the permit shall be issued. Such permit shall contain all information contained in said application and shall specify any and all sewerage and appurtenances to be utilized in such sewer construction together with the purpose of such use.

D. The time limit provided in subsection (A) of this section may be extended to a maximum of six months by a showing of good cause by the sewer connection permit holder as specified in subsection (F) of this section.

E. The time limit provided in subsection (B) of this section may be extended to a maximum of 18 months by a showing of good cause by the sewer connection permit holder as specified in subsection (F) of this section.

F. A sewer permit holder may seek extension of the time limits for commencement of construction or completion of the building sewer by written request showing good cause delivered to the city in person or by mail prior to the expiration of a sewer connection permit. Good cause for extension of time shall be limited to a showing of circumstances that were outside the control of the sewer connection permit holder that prevented the commencement of construction of or completion of the building sewer within the time limits specified by this chapter. Good cause does not include financial problems of the sewer connection permit holder preventing commencement or completion of the building sewer. Any decision granting extension of time limits shall be limited to a period of time necessary to grant relief from the circumstances showing good cause, not to exceed the limits specified in subsections (D) and (E) of this section. A decision on a request for extension of time limits shall be made in writing and mailed to the sewer connection permit holder at the address shown on the permit.

G. The city manager shall determine all requests for extension for good cause filed pursuant to subsection (F) of this section. Any sewer connection permit holder whose request for extension of time limits is denied may appeal the decision of the city manager to the city council by filing a notice of appeal with the city recorder within 14 days of the date of the mailing of the decision of the city manager. At its next regular meeting, the city council shall review the decision of the city manager being appealed to determine whether good cause exists as defined by subsection (F). The city council may affirm the decision of the city manager or overrule the city manager's decision and, if overruled, grant an extension of time limits as provided by subsection (F). [Ord. 91-O-430.C §§ 3, 4, 5; Ord. 88-O-430 Art. IV § 7.]

#### **~~13.10.180 Building sewer extension.~~**

~~The building sewer covered by this chapter shall extend to a point five feet from the building line of buildings or structures not being served by an existing building sewer. [Ord. 88-O-430 Art. IV § 8.]~~

#### **13.10.190 Separate sewer for each building required.**

A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewage disposal system is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. The

building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, if both buildings are owned by one person. [Ord. 88-O-430 Art. IV § 9.]

#### **13.10.200 Conformity to city standards.**

***All work must be constructed in accordance with current standards defined in the Engineering Requirements and Standard Specifications for Public Works Infrastructures.***

~~The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, connecting, testing, and backfilling the trench, shall all conform to the permit conditions, and to the requirements of the Oregon State Plumbing Laws and Administrative Rules **Engineering Requirements and Standard Specifications for Public Works Infrastructure** and other applicable rules and regulations of the city. [Ord. 88-O-430 Art. IV § 10.]~~

#### **13.10.210 Elevation of building sewer.**

~~Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. [Ord. 88-O-430 Art. IV § 11.]~~

#### **13.10.220 Groundwater or surface runoff.**

No person shall make connection of roof downspouts, exterior foundation drains, driveway drains, areaway drains, or other surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer and any such connections having been made previously shall be removed at the sole cost and expense of the owner of buildings or property so connected. [Ord. 88-O-430 Art. IV § 12.]

#### **13.10.230 Fees and charges for public sewer connection.**

When a connection of a building sewer requires a new connection or tap to be made into the public sewer, the city's staff shall make or inspect the connection to the public sewer installing the building sewer (service lateral) from the public sewer main to the right-of-way line of the city, county, state, and public rights-of-way, or sanitary sewer easements. Fees and charges for public sewer connection as established from time to time by resolution of the city council shall be paid at the time the required connection permit application is filed with the city. Said fee shall be in addition to an appropriate property assessment charge and **systems development charges**. ~~shall only cover the cost of installing the building sewer within city, county, state and public rights-of-way, within sanitary sewer line easements, and including connection to the public sewer main.~~ All connections, including the building sewer, shall be made gastight and watertight. [Ord. 88-O-430 Art. IV § 13.]

#### **13.10.240 Installation requirements.**

All excavations for building sewer installation shall be made in a safe and workmanlike manner, adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner

satisfactory to the city and to the state. Such restoration, if not properly completed by the owner, shall be completed by the city and all costs of such restoration shall be and become a lien against the property to be collected as provided by law. The property owner shall be responsible for obtaining all necessary permits required by the city and state for construction in rights-of-way. [Ord. 88-O-430 Art. IV § 14.]

#### **13.10.250 As-constructed drawings required.**

Prior to final connection to an existing public sewer, and before the public sewer is used, the property owner or his agent shall provide the city with written documented evidence that ***the installation has been approved by the AHJ, such evidence may, at the City's discretion,*** ~~the city building and plumbing inspector has approved the building sewer plumbing on the building side to a point five feet outside the building line.~~ Such evidence shall in all cases include as-constructed drawings bearing the seal and signature of a registered, professional engineer. [Ord. 88-O-430 Art. IV § 15.]

#### **13.10.260 Responsibility for sewer laterals.**

A. Gravity Lines. An owner is responsible for the operation, maintenance and condition of a sewer lateral on private property. In the case of an existing sewer lateral that does not have a cleanout located ***within*** 12 inches of the property line ***and*** within the city right-of-way or city utility easement, the owner is responsible for the line to the main.

***The city is responsible for the operation, maintenance and condition of a sewer lateral from the existing cleanouts as described above, to the sewer main as long as all facilities are located in a recorded easement or City right of way. , or, if they so choose, The City will accept maintenance of the lateral if they may Owner installs a cleanout within 12 inches of the property line and within the city right-of-way or city utility easement and the lateral meets City Standard Specifications.***

***All new cleanouts and laterals in the city right of way require a public works permit and shall comply with the current version of Engineering Requirements and Standard Specifications for Public Works Infrastructure.***

~~property line cleanout at, or near, the property line to the main. A one-way cleanout in the direction of flow shall be provided within 12 inches of the property line within the city right-of-way or city utility easement on all new and replaced sewer lateral lines.~~

~~If the property owner desires to install the cleanout on their side of the property line, they may do so under the authority of their sewer lateral permit. If the cleanout is to be installed in the city right-of-way or utility easement, an additional permit is required from the public works department. In either case the installation will be inspected by city staff.~~

***If a connection is proposed to an existing sewer lateral, the City Site Plan Committee has the authority to require an inspection report be provided by the applicant to determine the condition of the existing lateral. During the building permit review processes, the City Site Plan Committee will determine if the applicant is required to provide the City a TV inspection report. Factors requiring a TV inspection may include, but are not limited to, the age, whether the area has storm intrusion rates, history of sewer back-ups or sewer overflows, and/or lack of records on the sewer lateral construction. The City will review said inspection report and determine if the sewer lateral's condition allows for storm water intrusion. If the lateral is conducive to storm intrusion, the City will determine the necessary corrective action required by the Property Owner. ~~repair, or rehabilitation work necessary to eliminate the intrusion. line. If the line is not deemed to be in good repair the lateral shall be properly abandoned and a new connection established.~~***

B. Pressure Lines. An owner is responsible for the operation, maintenance and condition of a pressure line in its entirety. The owner must obtain a public works right-of-way permit to perform repairs within the city right-of-way or city utility easement. [Ord. 10-O-660 § 2; Ord. 88-O-430 Art. IV § 16.]

#### ***13.10.265 Sewer Lateral Rebate Program***

***When funding is available through the annual fiscal year budget, the city will invite private owners to replace deteriorated and failing private sewer laterals in the right of way with a rebate subsidy. As funds are limited, reimbursement funds are made available to the following priorities;***

- 1) Sewer laterals in the street right of way scheduled for street paving.***
- 2) Sewer rehabilitation projects.***
- 3) Smoke testing or TV inspection issues.***
- 4) The pipe is in jeopardy of failure and is undermining the City right of way.***
- 5) The location has been identified as a high inflow and infiltration (I/I) area .***

***Rebate funding shall not exceed one half the cost of construction up to a maximum \$2,000 per lateral. The rebate will apply only to lateral replacement in the City right of way, shall include a clean out in the City right of way, and be constructed in accordance with the City's Engineering Requirements and Standard Specifications for Public Works Infrastructure. The City will assume future maintenance responsibility of permitted laterals meeting current design standards.***

#### ***13.10.270 Connections outside city limits.***

In order to assure required control by the city of connections and input to its sewage system and treatment plant in perpetuity, all persons initiating or renewing requests for sewer service outside the corporate limits of the city shall execute an agreement by and between the requesting property owner and

the city to annex to the city at such future time as all legal requirements for annexation have otherwise been met and at the discretion of the city. The said agreement shall be and become a covenant to run with the land so served. [Ord. 88-O-430 Art. IV § 17.]

#### **13.10.280 Sewer main extensions.**

A. Any person or persons desiring a city sewer line to be extended to their property for connection thereto shall be responsible for the costs of said construction and for the construction of the same according to the requirements hereof and to standard specifications and drawings submitted to and approved by the city.

B. All such sewer main line extensions, exclusive of service lines, shall become the property of the city upon completion of the same by the owner or contractor and inspection and acceptance by the city. The person or person constructing said sewer system shall provide and dedicate to the city an easement of a width and length required by the city for maintenance and operation of said sewer system prior to acceptance of the same by the city.

C. If the sewer line, as extended, provides sewer service or is capable of providing sewer service to other property in the city not previously connected with the city sewer system, then the person or persons constructing the sewer line shall file a verified statement of the total cost of construction of the sewer main line with the city. The ~~city manager~~ **Public Works Director**, after verifying said statement of costs, shall compute the proportionate cost of construction of said line per lot for each lot capable of being served by said line, said costs to be determined according to the proportionate number of square feet in each of said lots. Corner lots already served by existing sewer main shall be exempted from the calculation.

D. After computation of the proportionate costs attributable to each lot by the ~~city manager~~, the ~~city manager~~ the **Public Works Director**, the **Public Works Director** shall file with the city clerk ~~Recorder~~ a statement showing the costs of construction attributable to each lot. The ~~city recorder/treasurer~~ **Finance and Human Services Director** shall then maintain a certified list of the costs attributable to each lot owner who did not share in the cost of construction of the sewer main in the first instance.

E. Any person or persons owning a lot who did not share in the initial cost of construction of the sewer main line who desires to connect to the sewer main line shall first pay to the ~~city recorder/treasurer~~ **Finance and Human Resources Director** the proportionate amount as computed by the ~~city manager~~ **Public Works Director** to be the cost per lot ~~together with interest at the rate of eight per annum~~ before said person or persons shall be allowed to connect to the sewer main line or before a building permit for construction of said lot shall be issued by the city. Upon receipt of the same, the ~~city recorder/treasurer~~ **Finance and Human Resources Director** shall file a statement, duly certified, showing that payment of sewer main line construction charges attributable to said lot have been paid.

F. Upon receipt of the proportionate share of moneys attributable to that lot desiring to connect to the constructed sewer main line ~~together with interest accrued thereon~~, the ~~city recorder/treasurer~~ **Finance and Human Services Director** shall place said funds in a trust fund for the benefit of the person or

persons who initially constructed the sewer main line or their successors in interest. As said moneys are paid into the trust fund, the ~~city recorder/treasurer~~ **Finance and Human Services Director** shall apportion the same ~~together with interest accrued thereon~~, to the person or persons originally paying for the sewer main line in the amounts to which said person or persons are respectively entitled; provided however, that in the event said person or persons originally paying for the sewer main line shall have transferred said property to a third party, the ~~city recorder/treasurer~~ **Finance and Human Resource Director** shall pay such proportionate share ~~together with interest accrued thereon~~, to the owner of record at the time such payment is made; and provided further, that the ~~city recorder/treasurer~~ **Finance and Human Resource Director** shall pay such proportionate share ~~together with interest accrued thereon~~, to a purchaser under contract of sale, if in such contract of sale the seller authorizes such payment to be made to the purchaser. Said trust fund shall continue for a period of 10 years, after which time the ~~city recorder/treasurer~~ **Finance and Human Resource Director** shall cause the trust fund to be closed and any proceeds remaining in the fund to be transferred to the person or persons constructing the sewer main line or their successors in interest. After the period of 10 years has expired, the city shall no longer require any person or persons desiring to connect to said sewer main line to pay the proportionate costs of construction as set forth in this section, nor shall the city be responsible for collection of the same.

[Ord. 88-O-430 Art. IV § 18.]

# IN AND FOR THE CITY OF BROOKINGS

## STATE OF OREGON

### **ORDINANCE 14-O-725**

**IN THE MATTER OF ORDINANCE 14-O-725, AN ORDINANCE AMENDING BROOKINGS MUNICIPAL CODE SECTIONS 13.10.010, 13.10.060, 13.10.110, 13.10.120, 13.10.140, 13.10.150, 13.10.200, 13.10.230, 13.10.250, 13.10.260, 13.10.280, ADDING SECTION 13.10.265, AND DELETING SECTIONS 13.10.130, 13.10.180 AND 13.10.210 OF CHAPTER 13.10, SEWER USE REGULATIONS.**

Sections:

Section 1. Ordinance identified.

Section 2. Amends Sections 13.10.010, 13.10.060, 13.10.110, 13.10.120, 13.10.140, 13.10.150, 13.10.200, 13.10.230, 13.10.250, 13.10.260 and 13.10.280.

Section 3. Adds Section 13.10.265.

Section 4. Deletes Sections 13.10.130, 13.10.180 and 13.10.210.

The City of Brookings ordains as follows:

**Section 1. Ordinance Identified.** This ordinance amends Brookings Municipal Code Sections 13.10.010, 13.10.060, 13.10.110, 13.10.120, 13.10.140, 13.10.150, 13.10.200, 13.10.230, 13.10.250, 13.10.260, 13.10.280, adds Section 13.10.265 and deletes Sections 13.10.130, 13.10.180 and 13.10.210.

**Section 2. Amends Sections 13.10.010, 13.10.060, 13.10.110, 13.10.120, 13.10.140, 13.10.150, 13.10.200, 13.10.230, 13.10.250, 13.10.260, 13.10.280.** Sections 13.10.010, 13.10.060, 13.10.110, 13.10.120, 13.10.140, 13.10.150, 13.10.200, 13.10.230, 13.10.250, 13.10.260, 13.10.280 are amended to read as follows:

#### **13.10.010 Definitions.**

“AHJ” authority having jurisdiction

“Approving authority” shall mean the mayor and the council of the city of Brookings, or its duly authorized representative.

“BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees centigrade, expressed in milligrams per liter.

“Building” shall mean any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

“Building drain” shall mean that part of the lowest horizontal piping of a drainage system which received the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

“Building sewer” shall mean the extension from a building of the building drain to the public sewer or other place of disposal.

“Chlorine requirement” shall mean the amount of chlorine, in parts per million by weight, which must be added to sewage to produce a specified residual chlorine content, or to meet the requirements of some other objective, in accordance with procedures set forth in “standard methods.”

“City” shall mean the city of Brookings, Oregon, as represented by the city manager or his designee.

“City engineer” shall mean the city engineer of the city of Brookings, Oregon, or the city’s duly authorized agent.

“Commercial building” shall mean all building or premises used for any purpose other than a dwelling unit having a sewage discharge of a kind, type and volume similar to a single-family dwelling unit or multiunit residential structure including a manufactured dwelling park or recreational vehicle park, but not an industrial waste contributor.

“Commercial user” shall mean the owner, occupant or lessee of any premises used for commercial or business purposes which is not an industrial user as defined in this article.

“Council” shall mean the city council of the city of Brookings, Oregon.

“Design life” shall mean the period during which a treatment works is planned and designed to be operated.

“Domestic user” shall mean any person who discharges only domestic sewage, or the owner of property which is connected to the public sewer system of the city.

“Dwelling unit” shall mean each single-family dwelling unit used for permanent human habitation, including manufactured homes and recreational vehicles if so used.

“Garbage” shall mean the residue from the preparation and dispensing of food, and from the handling, storage, and sale of food products and produce.

“Ground garbage” shall mean the residue from the preparation, cooking, and dispensing of food that has been shredded to such degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

“Industrial unit” shall mean any business, occupation or enterprise having a sewage discharge which, by reason of the manufacture or industrial process involved or through services rendered, is any volume in excess of a single-family residence or is of a kind or type dissimilar to that of a single-family residence because of the discharge of chemicals or by-products of the nonresidential or industrial process.

“Industrial user” shall mean any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual 1972, Office of Management and Budget, as amended and supplemented under one of the divisions cited in 40 CFR, Part 35, Section 35.2005[19].

“Industrial wastes” shall mean any nondomestic liquid, gaseous substance or semi-solid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from sanitary sewage), and the contents of chemical toilets, septic tanks, and wasteholding tanks.

“Infiltration” shall mean any water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow.

“Inflow” shall mean any water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

“Manufactured dwelling” shall mean a transportable single-family dwelling conforming to the Manufactured Housing Construction and Safety Standards Code (also referred to as the HUD code

“Modular home” shall mean a transportable single-family dwelling conforming to the Oregon State

Structural Specialty Code and Fire Life Safety Regulations, latest edition, and intended for permanent occupancy.

“Multifamily dwelling unit” shall mean any building or dwelling unit as herein defined, designed or modified to be used as two or more dwelling units.

“Operation and maintenance” shall mean activities required to assure the dependable and economical function of sewage disposal works:

1. “Maintenance” means preservation of functional integrity and efficiency of equipment and structures. This includes preventative maintenance, corrective maintenance and replacement of equipment.
2. “Operation” means control of the unit processes and equipment which make up the sewage disposal works. This includes administration, financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.
3. “Operation and maintenance” shall also mean “replacement.”

“Parts per million” shall mean a weight-to-weight ratio; the parts per million value multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water.

“Person” shall mean any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, government agency, or other entity.

“pH” shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

“Private sewer disposal system” shall mean a nonpublic sewer disposal system approved by the Oregon Department of Environmental Quality (DEQ), and operated and maintained in conformity with requirements of DEQ.

“Public sewer” shall mean a sanitary sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

“Public works director” shall mean the public works director for the city of Brookings or the city’s authorized representative.

“Recreational vehicle” shall mean a self-propelled or towable mobile designed used for temporary dwelling purposes by nonresident travelers.

“Recreational vehicle dumping station” shall mean a facility connected to a public sewer which accepts liquid wastes dumped from holding tanks of recreational vehicles such as travel trailers, motor homes, campers and other mobile living units where such wastes pass into the public sewer system, regardless of whether such wastes are accepted by the recreational vehicle dumping station operator with or without charge.

“Recreational vehicle park” shall mean a lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

“Replacement” shall mean obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the sewage disposal works to maintain the capacity and performance for which such works were designed and constructed.

“Residence” shall mean buildings, structures and manufactured or modular units, including recreational vehicles that are constructed and/or used primarily for single-family residential purposes.

“Sanitary sewer” shall mean a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

“Septic tank” shall mean a watertight receptacle which receives the discharge of sewage from a sanitary private drainage system and which is so designed, constructed and operated as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption facility, all of which must be located upon and within the site or property which it serves.

“Service charge” or “user charge” shall mean the monthly fee charged for service to all users of the public sewer system.

“Sewage” shall mean the water-carried human and animal wastes from residences, buildings and industrial establishments or other sources together with such groundwater infiltration and surface water as may be present.

“Sewage disposal works” also referred to as “treatment works” shall mean all facilities for collecting, transporting, pumping, treating, and disposing of sewage and industrial waste, including sewerage as well as the sewage treatment plant.

“Sewage treatment plant” shall mean an assemblage of devices, structures, and equipment for treating sewage and industrial wastes and may be used synonymously with the term “wastewater treatment plant.”

“Sewer user” shall mean every person using a public sewer who owns a building connected to a public sewer, or who has a residence, commercial building, or industry within 200 feet of an available sewer, and who puts to use a sewer which requires sewage facilities, though not connected therewith.

“Sewerage” shall mean the system of sewers and appurtenances for the collection, transportation, and pumping of sewage and industrial wastes.

“Shall” is mandatory; “may” is permissible.

“Standard methods” shall mean the examination and analytical procedures set forth in the most recent edition of “Standard Methods for the Examination of Water, Sewage, and Industrial Wastes,” published jointly by the American Public Health Association, the American Water Works Association, and the Federation of Sewage and Industrial Wastes Associations.

“Storm sewer” shall mean a sewer that carries storm, surface, and groundwater drainage, but excludes sewage and industrial wastes.

“Surcharge” shall mean a charge or assessment in addition to the service or user charge levied for a specific purpose.

“Suspended solids” shall mean solids that either float on the surface of, or are in suspension in water, sewage, or industrial waste, and which are removable by a laboratory filtration device. Quantitative determination of suspended solids shall be made in accordance with procedures set forth in “standard methods.”

“Useful life” shall mean the period during which a treatment works operates.

“User charge” shall mean a charge levied on users of a treatment works for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such works, and the term “user charge” shall have the same meaning and may be used synonymously with the term “service charge.”

“Wastewater” shall mean liquid or water-carried pollutants including any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the publicly owned treatment works.

“Wastewater treatment plant” shall mean the same and may be used synonymously with the term “sewage treatment plant.” [Ord. 91-O-430.C § 2; Ord. 88-O-430 Art. I.]

**13.10.060** Owner required to connect to public sewer.

Except as set forth in this section, the owner and the occupant of all houses, buildings, or properties used for human occupancy, employment, commerce, industry, recreation, or other purposes, situated within or served by the city treatment works and abutting any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided, that said public sewer is within 200 feet of the property line; except that, after the initial construction of the public treatment works is completed, connection to such facilities shall be completed within 12 months after official notice to do so. The city council may set a shorter time for correction or connection to public sewer for users having problems which are determined to be a threat to public health, safety or general welfare.

A. The sewer connection requirement described above shall not be applicable if topographic, manmade features or intervening properties (where the subject property does not front on a public sewer) make connection physically impractical.

B. When a public sewer is extended to be within 200 feet of a property in order to serve an upstream development or property, the owner and/or occupant of the property shall not be required to connect to the public sewer system if the property has a fully functioning septic system. The property shall thereafter connect to the public sewer when the property owner or occupant desires to connect; when the existing septic system fails; or when it is identified as a public health hazard. If connection to the public sewer is made within the line extension payback period, BMC [13.10.280\(E\)](#) shall apply. Prior to connection the applicant must provide evidence that the septic system has been properly abandoned and accepted as such through the Curry County Public Services Department.

C. The exceptions to the public sewer connection requirements contained in subsections (A) and (B) of this section shall not apply to local improvement or assessment districts established for the purpose of constructing public sewers within said district. [Ord. 93-O-430.D § 2; Ord. 88-O-430 Art. III § 1.]

**13.10.110** Permit required.

It shall be unlawful for any person to open, uncover, or in any manner make connection with any sewer line of the city, or to lay drain or sewer pipes on any premises or in any street or alley in the city or in any area served by the city treatment works without first applying for and obtaining a permit therefore from the authority having jurisdiction (AHJ). The city shall issue a permit to a property owner who certifies on his application that the work covered by the permit will be performed by the property owner or a qualified licensed contractor if work is located within the City right of way and part of the City infrastructure.. [Ord. 88-O-430 Art. IV § 3.] [Ord. 88-O-430 Art. IV § 1.]

**13.10.120** Application form.

The owner or his agent shall make application on a special form furnished by the AHJ. A permit and inspection fee in amounts to be established by resolution of the city council shall be paid to the city at the time the application is filed for connection to the public sewer for all work to occur in the public right of way and any applicable system development charges. Associated work that is to occur on private property is to be permitted and inspected through the Public Services Department of Curry County. [Ord. 88-O-430 Art. IV § 2.]

**13.10.140** Inspection required

Inspection and written approval of the public works director or designee shall be obtained before any work

covered by this chapter is covered or concealed. [Ord. 88-O-430 Art. IV § 4.]

**13.10.150 Information required.**

As part of the application for a permit, the property owner or his agent may be required to provide the following:

- A. Copies of plot plan to scale and specifications in duplicate, including, but not limited to, lot dimensions, location of building or structure or other improvements to be served;
- B. Location of existing septic tanks, drain fields and building sewer lines;
- C. Location of water service lines and/or wells, and other underground utilities;
- D. Location of driveways;
- E. Location, depth, grade and material of proposed building sewer;
- F. Plans and specifications for materials and installation;
- G. Purpose for which the sewer connection is to be used, i.e., residential, multifamily residential, commercial, industrial, etc.;
- H. Point of proposed connection of the new or existing building sewer to the building drain. [Ord. 88-O-430 Art. IV § 5.]

**13.10.200 Conformity to city standards.**

All work must be constructed in accordance with current standards defined in the Engineering Requirements and Standard Specifications for Public Works Infrastructures.

**13.10.230 Fees and charges for public sewer connection.**

When a connection of a building sewer requires a new connection or tap to be made into the public sewer, the city's staff shall make or inspect the connection to the public sewer installing the building sewer (service lateral) from the public sewer main to the right-of-way line of the city, county, state, and public rights-of-way, or sanitary sewer easements. Fees and charges for public sewer connection as established by resolution of the city council shall be paid at the time the required connection permit application is filed with the city. Said fee shall be in addition to an appropriate property assessment charge and systems development charges. All connections, including the building sewer, shall be made gastight and watertight. [Ord. 88-O-430 Art. IV § 13.]

**13.10.250 As-constructed drawings required.**

Prior to final connection to an existing public sewer, and before the public sewer is used, the property owner or his agent shall provide the city with written documented evidence that the installation has been approved by the AHJ, such evidence may, at the City's discretion, include as-constructed drawings bearing the seal and signature of a registered, professional engineer. [Ord. 88-O-430 Art. IV § 15.]

**13.10.260 Responsibility for sewer laterals.**

A. Gravity Lines. An owner is responsible for the operation, maintenance and condition of a sewer lateral on private property. In the case of an existing sewer lateral that does not have a cleanout located within 12 inches of the property line and within the city right-of-way or city utility easement, the owner is responsible for the line to the main.

The city is responsible for the operation, maintenance and condition of a sewer lateral from the existing cleanouts as described above, to the sewer main as long as all facilities are located in a recorded easement or City right of way. The City will accept maintenance of the lateral if the Owner installs a cleanout within 12 inches of the property line and within the city right-of-way or city utility easement and the lateral and connection meets City Standard Specifications.

All new cleanouts and laterals in the city right of way require a public works permit and shall comply with the current version of Engineering Requirements and Standard Specifications for Public Works Infrastructure.

If a connection is proposed to an existing sewer lateral, the City Site Plan Committee has the authority to require an inspection report be provided by the applicant to determine the condition of the existing lateral. During the building permit review processes, the City Site Plan Committee will determine if the applicant is required to provide the City a TV inspection report. Factors requiring a TV inspection may include, but are not limited to, the age, whether the area has storm intrusion rates, history of sewer back-ups or sewer overflows, and/or lack of records on the sewer lateral construction. The City will review said inspection report and determine if the sewer lateral's condition allows for storm water intrusion. If the lateral is conducive to storm intrusion, the City will determine the necessary corrective action required by the Property Owner.

B. Pressure Lines. An owner is responsible for the operation, maintenance and condition of a pressure line in its entirety. The owner must obtain a public works right-of-way permit to perform repairs within the city right-of-way or city utility easement. [Ord. 10-O-660 § 2; Ord. 88-O-430 Art. IV § 16.]

### **13.10.280 Sewer main extensions.**

A. Any person or persons desiring a city sewer line to be extended to their property for connection thereto shall be responsible for the costs of said construction and for the construction of the same according to the requirements hereof and to standard specifications and drawings submitted to and approved by the city.

B. All such sewer main line extensions, exclusive of service lines, shall become the property of the city upon completion of the same by the owner or contractor and inspection and acceptance by the city. The person or person constructing said sewer system shall provide and dedicate to the city an easement of a width and length required by the city for maintenance and operation of said sewer system prior to acceptance of the same by the city.

C. If the sewer line, as extended, provides sewer service or is capable of providing sewer service to other property in the city not previously connected with the city sewer system, then the person or persons constructing the sewer line shall file a verified statement of the total cost of construction of the sewer main line with the city. The Public Works Director, after verifying said statement of costs, shall compute the proportionate cost of construction of said line per lot for each lot capable of being served by said line, said costs to be determined according to the proportionate number of square feet in each of said lots. Corner lots already served by existing sewer main shall be exempted from the calculation.

D. After computation of the proportionate costs attributable to each lot by the Public Works Director, the Public Works Director shall file with the city Recorder a statement showing the costs of construction attributable to each lot. The Finance and Human Services Director shall then maintain a certified list of the costs attributable to each lot owner who did not share in the cost of construction of the sewer main in the first instance.

E. Any person or persons owning a lot who did not share in the initial cost of construction of the sewer main line who desires to connect to the sewer main line shall first pay to the Finance and Human Resources Director the proportionate amount as computed by the Public Works Director to be the cost per lot before said person or persons shall be allowed to connect to the sewer main line or before a building permit for construction of said lot shall be issued by the city. Upon receipt of the same, the Finance and Human Resources Director shall file a statement, duly certified, showing that payment of sewer main line construction charges attributable to said lot have been paid.

F. Upon receipt of the proportionate share of moneys attributable to that lot desiring to connect to the constructed sewer main line, the Finance and Human Services Director shall place said funds in a trust

fund for the benefit of the person or persons who initially constructed the sewer main line or their successors in interest. As said moneys are paid into the trust fund, the Finance and Human Services Director shall apportion the same to the person or persons originally paying for the sewer main line in the amounts to which said person or persons are respectively entitled; provided however, that in the event said person or persons originally paying for the sewer main line shall have transferred said property to a third party, the Finance and Human Resource Director shall pay such proportionate share to the owner of record at the time such payment is made; and provided further, that the Finance and Human Resource Director shall pay such proportionate share to a purchaser under contract of sale, if in such contract of sale the seller authorizes such payment to be made to the purchaser. Said trust fund shall continue for a period of 10 years, after which time the Finance and Human Resource Director shall cause the trust fund to be closed and any proceeds remaining in the fund to be transferred to the person or persons constructing the sewer main line or their successors in interest. After the period of 10 years has expired, the city shall no longer require any person or persons desiring to connect to said sewer main line to pay the proportionate costs of construction as set forth in this section, nor shall the city be responsible for collection of the same. [Ord. 88-O-430 Art. IV § 18.]

**Section 3.**     Adds Section 13.10.265: Section 13.10.265 is added as follows:

**13.10.265 Sewer Lateral Rebate Program**

When funding is available through the annual fiscal year budget, the city will invite private owners to replace deteriorated and failing private sewer laterals in the right of way with a rebate subsidy. As funds are limited, reimbursement funds are made available to the following priorities;

- 1) Sewer laterals in the street right of way scheduled for street paving.
- 2) Sewer rehabilitation projects.
- 3) Smoke testing or TV inspection issues.
- 4) The pipe is in jeopardy of failure and is undermining the City right of way.
- 5) The location has been identified as a high inflow and infiltration (I/I) area .

Rebate funding shall not exceed one half the cost of construction up to a maximum \$2,000 per lateral. The rebate will apply only to lateral replacement in the City right of way, shall include a clean out in the City right of way, and be constructed in accordance with the City’s Engineering Requirements and Standard Specifications for Public Works Infrastructure. The City will assume future maintenance responsibility of permitted laterals meeting current design standards.

First Reading:	_____	Passage:	_____
Second Reading:	_____	Effective Date:	_____

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2014

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

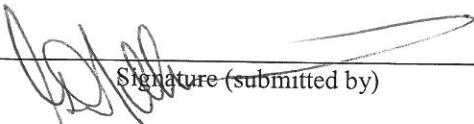
\_\_\_\_\_  
City Recorder Joyce Heffington

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: February 24, 2014

Originating Dept: Public Safety

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

Subject: Revisions to animal code provisions in the Brookings Municipal Code.

Recommended Action:

Adopt Ordinance 14-O-729, amending Brookings Municipal Code Section 8.15.020, Control of Domestic Animals.

Background/Discussion:

The City Council discussed revisions to Brookings Municipal Code (BMC) Section 8.15.020 at its February 3, 2013 Workshop. Currently, this Code section, first enacted in 1986, provides regulations for the control of domestic animals, prohibits dogs being allowed to run at large, and prescribes the duties of the Brookings Police Department in handling stray dogs.

The Police Department does not patrol for stray dogs, but does respond to stray dog calls.

In current practice, when stray dogs are encountered by Brookings police officers, an attempt is made to contact the dog owner. If the owner cannot immediately be located, the dog is placed in a temporary "holding cage" located at the City Public Works Maintenance Yard.

In the great majority of cases, stray dogs are captured by a resident who takes the dog to the holding cage. The Police Department then notifies the non-profit organization, "Pennies For Pooches" (P4P), of the dog's placement at this facility. A P4P volunteer then picks up the dog and transports it to the animal shelter in Gold Beach, at which time its disposition is entirely relinquished to the shelter.

Curry County no longer operates the animal shelter in Gold Beach, and has no County animal control employees. The shelter is now operated by P4P.

P4P contacted the City with a proposal to respond to dog-at-large calls for a call-out fee of \$25.00 and a transportation fee based upon the IRS mileage rate from Gold Beach and back. P4P also noted some inconsistencies between BMC, County, and State animal control regulations relating to requiring sterilization of impounded dogs prior to adoption, dog licensing, payment of its housing by a new owner, and the disposition of impounded dogs after a period of impoundment.

In 1964, Curry County created a "Dog Control District" which provides that the County has jurisdiction for dog licensing and for prohibiting dogs from running at large in all areas of the County, including within the cities. Oregon Revised Statute (ORS) Section 609.030 provides

that the County “from the general fund or out of funds obtained from dog licenses and from the redemption of dogs impounded...shall operate a dog pound (shelter).”

The City has traditionally provided assistance to the County in handling stray dogs through its Police Department. Even when the County had animal control employees, the geographic distances in Curry County often resulted in long delay times between when a stray dog is reported and a then-County animal control officer, arrived.

Both the County Code and ORS address standards for licensing, impounding and disposition of impounded dogs. The ORS also prescribes the minimum length of time a dog may be impounded.

Staff is recommending that the BMC be revised to:

- Adopt, by reference, specific sections of the Curry County Code;
- Remove conflicting language; and
- Direct the Brookings Police Department to “provide mutual aid assistance to County officers, employees and volunteers engaged in animal control activities within the City of Brookings.”

Attachment(s):

- a. Ordinance 14-O-729
- b. Revisions to BMC Section 8.15.020
- c. County dog control regulations
- d. Related ORS sections

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 14-O-729**

**IN THE MATTER OF ORDINANCE 14-O-729, AN ORDINANCE AMENDING BROOKINGS MUNICIPAL CODE SECTION 8.15.020, CONTROL OF DOMESTIC ANIMALS, OF CHAPTER 8.15, NUISANCES, IN ITS ENTIRETY.**

Sections:

- Section 1. Ordinance identified.
- Section 2. Amends Section 8.15.020

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Brookings Municipal Control Section 8.15.020, Control of domestic animals, of Chapter 8.15, Nuisances, in its entirety.

Section 2. Amends Section 8.15.020 : Section 8.15.020 is amended to read as follows:

**8.15.020 Control of domestic animals.**

A. No person shall permit any cow, horse, goat, sheep, or other domestic animal kept in any enclosed or unenclosed lot or tract of land within the corporate limits of the city of Brookings to leave said place where said animal is so kept and wander at large within the corporate limits of the city.

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog, cat, or other such animal is deemed herein to be a public nuisance if it bites a person; chases persons or vehicles; damages or destroys property of persons other than the animal's owner; scatters garbage; trespasses on private property of persons other than the animal's owner; disturbs any person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making; defecates on the property of another or of the public; or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. "Vicious" as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings. F. The City of Brookings hereby adopts by reference all provisions, as contained in Curry County Code Section 4.01.030 through and including Section 4.01.200 et sec.

G. The Brookings Police Department is authorized and directed to provide mutual aid assistance to County officers, employees and volunteers engaged in animal control activities within the City of Brookings.

H. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal.

I. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 3; Ord. 86-O-406 § 2.]

First Reading:	_____	Passage:	_____
Second Reading:	_____	Effective Date:	_____

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2014

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

\_\_\_\_\_  
City Recorder Joyce Heffington

#### **8.15.020 Control of domestic animals.**

A. No person shall permit any cow, horse, goat, sheep, or other domestic animal kept in any enclosed or unenclosed lot or tract of land within the corporate limits of the city of Brookings to leave said place where said animal is so kept and wander at large within the corporate limits of the city.

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog, cat, or other such animal is deemed herein to be a public nuisance if it bites a person; chases persons or vehicles; damages or destroys property of persons other than the animal's owner; scatters garbage; trespasses on private property of persons other than the animal's owner; disturbs any person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making; defecates on the property of another or of the public; or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. "Vicious" as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings. ~~When a dog is found running at large it may be taken up and impounded by the Brookings police department or said office's designee and, if so impounded, said animal shall be held in any reasonable and adequate shelter which can be provided for such purposes. A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment. If no owner appears to redeem his/her dog within five days after impoundment, the dog may be released to a responsible person upon receiving assurance from that person that he or she will properly license and care for the dog and not allow the dog to run at large or become a nuisance, and upon payment of a sum which will cover the cost of keeping the dog during the impoundment. Any owner redeeming his/her dog shall pay, in addition to any fine imposed, a reasonable charge for the expense of keeping the dog during its confinement. If no owner is found for the dog nor any responsible person found within the above allotted time to whom the dog can be released, then the Brookings police department shall have total discretion and control of the further disposition of the animal.~~

F. The City of Brookings hereby adopts by reference all provisions, as contained in Curry County Code Section 4.01.030 through and including Section 4.01.200 et sec.

G. The Brookings Police Department is authorized and directed to provide mutual aid assistance to County officers, employees and volunteers engaged in animal control activities within the City of Brookings.

H.F. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal.

I.G. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 3; Ord. 86-O-406 § 2.]

## ARTICLE FOUR - ANIMAL CONTROL AND PROTECTION

### DIVISION ONE

### DOG CONTROL REGULATIONS

#### SECTION 4.01.010

#### RESERVED

#### SECTION 4.01.020

#### RESERVED

#### SECTION 4.01.030

#### PURPOSE STATEMENT

The purpose of this division shall be as follows:

- (1) To ensure that all dogs within Curry County are properly licensed; and
- (2) To make certain that all such dogs are vaccinated against rabies; and
- (3) To ensure that dogs shall not become a nuisance to the people within Curry County; and
- (4) To protect livestock from predatory dogs.

#### SECTION 4.01.040

#### JURISDICTION

- (1) The provisions of this division dealing with the licensing of dogs, and the prohibiting of dogs from running at large shall apply to all areas of Curry County.
- (2) All other provisions of this division apply only to the unincorporated areas of Curry County.

#### SECTION 4.01.050

#### DOG LICENSING

- (1) All dogs which have a set of permanent canine teeth or are six (6) months old, whichever comes first, are required to be duly licensed in accordance with this division by Curry County.
- (2) An owner or keeper who acquires an unlicensed dog must license said dog within thirty (30) days after becoming owner or keeper or the dog.
- (3) An owner who acquires a dog already licensed in Curry County must notify the licensing authority of the change of ownership within ten (10) days after the transfer of ownership. The license shall remain valid until the expiration date, if proper notice was given.
- (4) The license shall be valid for one (1) year from the date of issuance.

COURT BOOK  
of RECORDS

SECTION 4.01.060      PUBLIC NUISANCE

The owner or keeper of any dog shall not allow his/her dog to be a public nuisance.

SECTION 4.01.070      DEFINITIONS OF PUBLIC NUISANCE

Except as provided in Section 4.01.080, a dog is deemed to be a public nuisance if it:

- (1) Bites a person.
- (2) Chases any person or vehicle.
- (3) Damages or destroys property of persons other than the dog's owner.
- (4) Scatters garbage.
- (5) Trespasses on private property of persons other than the dog's owner.
- (6) Disturbs any person by frequent or prolonged noises.
- (7) Is a female in heat and running at large

SECTION 4.01.080      EXCLUSIONS TO PUBLIC NUISANCE

A dog shall not be considered a public nuisance under Section 4.01.070 if it bites a person who is wrongfully assaulting the dog or the dog's owner, or if it bites a person unlawfully trespassing upon premises owned or occupied by the dog's owner after being provoked by that person.

SECTION 4.01.090      PUBLIC NUISANCE PROCEDURE

(1) Any person who has cause to believe a dog is being maintained as a public nuisance may make a complaint either orally or in writing to the County. The complaint shall be considered sufficient cause for the County to investigate the matter and determine if the owner or keeper of this dog is in violation of Section 4.01.070.

(2) When a dog is found to be a public nuisance in accordance with Section 4.01.070, it may be impounded by the Sheriff's Deputy or Animal Control Officer, and the owner or keeper may be cited into court. Should a citation to appear in court be issued to the owner or keeper for keeping a dog which is a public nuisance, that person cited shall be allowed the option of forfeiture of bail in lieu of appearance in court in accordance with ORS. 609.092.

(3) If a dog has been impounded as a public nuisance for killing or injuring a person, it may be killed in a humane manner.

(4) Notwithstanding the provisions of this section, any dog impounded for biting a person shall be held for not less than ten (10) days before redemption

# COURT BOOK of RECORDS

or destruction to determine if the dog is rabid.

(5) Except as provided in Section 4.01.090 (3) and (4), all dogs taken up and impounded as a nuisance shall be kept for at least three (3) days if the dog is without a license or identification tag and for at least five (5) days if it has a license or identification tag or unless sooner redeemed by the owner. If no owner redeems the dog within the allotted time, the dog may be released to a responsible person upon receiving assurance that the person will properly care for the dog and not allow it to become a nuisance, and upon payment of sum established by the Board of County Commissioners, and purchase of a license if required. Should no person redeem or request the dog within the three or five days, whichever applies, the dog may be disposed of in a humane manner.

(6) If an owner redeems his dog, he shall pay a fee set by the Board of County Commissioners. The owner shall also pay the expense of keeping the dog during its confinement. If the dog is unlicensed, the owner shall purchase a license and pay the applicable penalty, if any, for failure to have a license.

(7) If a dog has been repeatedly found to be a public nuisance under Section 4.01.070, the court may order such disposition of the dog as the court considers necessary for the safety or health of the public.

## SECTION 4.01.100

### DOG RUNNING AT LARGE

In accordance with that election held by the citizens of Curry County in 1964, Curry County has been declared to be a Dog Control District. No dog is allowed to run at large within the confines of Curry County.

## SECTION 4.01.110

### EXCLUSIONS TO DOG RUNNING AT LARGE

As used in this Section, running at large does not include:

- (1) Use of a dog under supervision of a person in order to legally hunt, chase or tree wildlife.
- (2) Use to control or protect livestock.
- (3) Use in any other related agricultural activities.

## SECTION 4.01.120

### DOG RUNNING AT LARGE PROCEDURE

(1) A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment.

(2) If no owner appears to redeem his/her dog within the allotted time (as outlined in Section 4.01.090 (5)), the dog may be released to a responsible person upon receiving assurance from that person that they will properly license and care for the dog and not allow the dog to become a nuisance, and upon payment of a sum set by the Board of Commissioners which will cover the cost of keeping the dog during its impoundment. The person shall

# COURT BOOK of RECORDS

thereafter be liable as owner of the dog as provided by this section.

(3) Should no person redeem or request the dog within three or five days, whichever applies, the dog may be disposed of in a humane manner.

(4) It is the policy of Curry County that all dogs found running at large shall be returned to the owner or keeper, if at all possible. The Animal Control Officer shall have total discretion in exercising this policy.

(5) If the owner redeems his/her dog, he/she shall pay a fee set by the Board of County Commissioners. The owner shall also pay the expense of keeping the dog during its confinement. If the dog is unlicensed the owner shall purchase a license and pay the applicable penalty, if any, for failure to have a license.

## SECTION 4.01.130      ADDITIONAL PROHIBITED ACTIVITY

No person shall own, harbor, or keep any dog with knowledge that, while the dog was off the premises owned or under the control of its owner or keeper and while not acting under the direction of its master or the agents or employees of such master, the dog kills or seriously injures any person.

## SECTION 4.01.140      RESERVED

## SECTION 4.01.150      DOG INJURING LIVESTOCK

No owner or keeper shall allow or permit his/her dog(s) to kill, wound, injure, worry harass or chase livestock in Curry County.

## SECTION 4.01.160      DEFINITIONS

For purposes of Sections 4.01.150-4.01.170, the following definitions apply unless the context otherwise indicates:

(1) "Livestock": Livestock means horses, mules, jackasses, cattle, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages and hutches.

(2) "Owner": Owner means the person assuming the care and welfare of the dog at the time of the damage.

(3) "Keeper": Keeper means any person assuming the care and welfare of the dog at the time of the damage.

## SECTION 4.01.170      DOG INJURING LIVESTOCK PROCEDURE

(1) Any dog whether licensed or not, which while off the premises owned or under the control of its owner or keeper, that kills, wounds or injures any livestock not belonging to the master of such dog is a public nuisance and may be killed immediately by any person, with the following exception: no person shall kill any dog for killing, wounding or chasing chickens upon a public place,

# COURT BOOK of RECORDS

highway or within the corporate limits of any city.

(2) Any dog not immediately killed in the act of killing, wounding or causing injury to livestock shall be bound over to the County Animal Control Officer or other Law Enforcement Officers and impounded in a shelter to be established under the County General Fund or Dog Licensing Fund.

(3) Any dog impounded under Section 4.01.170 (2) shall not be released until a determination is made by the County Governing Body.

(4) If any dog not under the control of its owner or keeper is found chasing livestock or feeding upon the warm carcass of livestock not the property of such owner or keeper, this shall be deemed Prima Facie evidence that the dog has engaged in killing, wounding or causing injury to livestock.

(5) If there is reason to believe that reasonable testing of the dog is required, the dog will be impounded.

(6) It shall be within the discretion of the County Animal Control Officer to determine if a fecal examination or examination of the teeth of the dog will provide substantial evidence as to whether the dog has been engaged in killing, wounding or chasing livestock. Such examination shall be done by a licensed veterinarian.

(7) The County Governing Body shall determine whether the dog has been engaged in killing, wounding, chasing or causing injury to livestock. If the County Governing Body determines that the dog has been so engaged, the dog shall be killed in a humane manner, and the cost of keeping and testing of the dog during impoundment shall be paid by the owner of the dog.

(8) If the County Governing Body determines that the dog has not been so engaged, the dog shall be released to its owner and no costs assessed against the owner.

(9) If the dog had been impounded upon receipt of evidence from a complainant, and the Governing Body determines that the dog has not been so engaged, the complainant may be ordered to pay the cost of keeping and testing of the dog during impoundment.

(10) There is a disputable presumption that a dog kills, wounds or causes injury to livestock if:

(a) The dog is found chasing livestock not the property of the owner of the dog in an area where freshly killed or damaged livestock are found;

(b) The dog is found feeding upon a warm carcass of a livestock animal;

(c) An examination of the dog's feces indicated ingestion of portions of the anatomy or covering of the anatomy of livestock; or

# COURT BOOK of RECORDS

(d) An examination of the dog's teeth indicate ingestion of the anatomy or covering of the anatomy of the livestock, unless the dog is regularly used for the purpose of herding livestock.

## SECTION 4.01.180

### KEEPING A DOG WITH KNOWLEDGE IT HAS KILLED OR INJURED LIVESTOCK

(1) No person shall own, harbor, or keep any dog with knowledge that it has killed or injured any livestock.

(2) However no person shall be liable for harboring or keeping such dog with knowledge that it has killed or injured chickens unless the owner fails to pay full damages within three (3) days after receipt of demand for such damages from the owner.

## SECTION 4.01.190

### CLAIMS BY OWNERS OF LIVESTOCK

(1) The owner of any livestock killed, chased or injured by any dog may, within ten (10) days after the killing, chasing or injuring occurred or, became known to him, present to the County Governing Body a verified statement containing a full account of the incident stating in detail the amount of damage claimed on account thereof, and the name and address of the owner or keeper of the dog, if known. The claim shall be supported by the affidavit of at least one (1) disinterested person as to all material facts contained in it.

(2) It shall be the livestock owner's responsibility to notify the Curry County Sheriff's Department of the incident as soon as he/she becomes aware of it. The owner shall leave all slain livestock where found until the investigation has been completed.

(3) Upon being contacted by the livestock owner pursuing a claim, the Animal Control Officer shall investigate the claim and submit a written report to the Board.

(4) No claims shall be heard by the County Governing Board until all of the following has been completed:

(a) The livestock owner has submitted to the Board a written claim on the form adopted by the County.

(b) The livestock owner has notified the Curry County Sheriff's Department of the incident.

(c) The Sheriff's Department has completed the investigation and submitted a written report to the board.

(5) All claims presented to the County Governing Board shall be heard at the first regular session after their presentation, or as soon thereafter as may be practicable.

(6) If the Board determines that any livestock has been damaged by being

# COURT BOOK of RECORDS

injured, chased, wounded or killed, it shall file and enter a record of the value of the livestock and order a warrant drawn for the amount of damages thus found or any portion thereof that is considered just, to be paid by the County Treasurer out of the Dog Fund. If it considers the claim unjust, it shall disallow it and enter that fact upon its record.

(7) No claim shall be allowed where it appears that the injury or damage complained of was caused by a dog owned or controlled by the claimant or the agent of the claimant.

(8) The rate of payment shall be up to the following amounts: Sheep - \$25.00 each; Lambs - \$15.00 each; and all other livestock to be determined by the County Governing Board, but not to exceed \$50.00 each.

(9) In each case where a claim against the Dog Fund of Curry County has been paid by the County Governing Board the County shall be subrogated to all the rights of the owner of the livestock killed, wounded, chased or injured against the owner of the dog for damages. The District Attorney or County Counsel shall proceed properly in a lawful way to collect the damages. Any money so collected shall be paid over immediately to the County Treasurer and credited to the Dog Fund.

## SECTION 4.01.200      FEES

The Board of Curry County Commissioners, may by appropriate Order, establish such fees (not previously referenced by this division) which are necessary or expedient for the dog control program. Such fees may include, but shall not be limited to, charges for euthanasia and the renting of live traps.

**2011 ORS § 609.090<sup>1</sup>****Impounding certain dogs**

- **procedure for county disposition of impounded dogs**
- **impoundment fees and costs**
- **release of dog**

- (1) A law enforcement officer or dog control officer may cite a keeper, impound a dog, or both if:
  - (a) The dog is found running at large in violation of ORS 609.060 (Notice of county prohibition on dogs running at large);
  - (b) The dog is a public nuisance **as** described by ORS 609.095 (Dog as public nuisance); **or**
  - (c) The officer has probable cause to believe that the dog is a dangerous dog as defined in ORS 609.098 (Maintaining dangerous dog).
- (2) All dogs impounded under this section and ORS 609.030 (Establishing dog control district) shall be held in an adequate and **sanitary** pound to be provided by the county governing body from the general fund or out of funds obtained from dog licenses and from the redemption of dogs so impounded. However, in lieu of the establishment of a dog pound, the county governing body may contract for the care of the dogs. Unless claimed by its keeper, a dog shall be impounded for at least three days if the dog is without a license or identification tag and for at least five days if it has a license or identification tag. A reasonable effort shall be made to notify **the** keeper of a dog before the dog is removed from impoundment.
- (3) Unless the dog control board or county governing body provides otherwise, if the keeper appears and redeems the dog, the keeper shall pay a sum of not less than \$10 for the first impoundment and not less than \$20 for each subsequent impoundment and also pay the expense of keeping the dog during the time it was impounded. If the dog is unlicensed the keeper shall also purchase a license and pay the applicable penalty for failure to have a license. If the keeper is not the owner of the dog, the keeper may request that a license purchased by the keeper under this subsection be issued in the name of the dog owner.

- (4) In addition to any payment required pursuant to subsection (3) of this section, a dog control board or county governing body may require as a condition for redeeming the dog that the keeper agree to reasonable restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reasonable restrictions. As used in this subsection, reasonable restrictions may include, but is not limited to, sterilization.
- (5) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable restrictions imposed under subsection (4) of this section or if a keeper fails to provide acceptable proof of compliance to the dog control board or county governing body on or before the 10th day after issuance of the order imposing the restrictions. If the board or governing body finds the proof submitted by the keeper unacceptable, the board or governing body shall send notice of that finding to the keeper no later than five days after the proof is received.
- (6) If no keeper appears to redeem a dog within the allotted time, the dog may be killed in a humane manner. The dog control board or county governing body may release the dog to a responsible person upon receiving assurance that the person will properly care for the dog and upon payment of a sum established by the county governing body plus cost of keep during its impounding, and purchase of a license if required. The person shall thereafter be the keeper of the dog for purposes of ORS 609.035 (Definitions for ORS 609.035 to 609.110 and 609.990) to 609.110 (Dog License Fund).
- (7) If the keeper of a dog is not charged with violating ORS 609.095 (Dog as public nuisance) (2) or (3) or ORS 609.098 (Maintaining dangerous dog), and the dog control board or county governing body finds that the dog has menaced or chased a person when on premises other than the premises from which the keeper may lawfully exclude others or has bitten a person, the dog control board or county governing body may order that the dog be killed in a humane manner. Before ordering that the dog be killed, the board or governing body shall consider the factors described in ORS 609.093 (Considerations prior to disposing of chasing, menacing or biting dog) and issue written findings on those factors. Notwithstanding ORS 34.030 (Jurisdiction to grant writ), if the disposition order issued by the board or governing body provides that the dog is to be killed, a petition by the keeper for a writ of review must be filed no later than the 10th day after the dog control board or county governing body sends notice of the order to the keeper. Notwithstanding ORS 19.270 (Appellate jurisdiction of Supreme Court and Court of Appeals), 19.330 (Stays generally) and 34.070 (Stay of proceedings), the order for the killing of the dog may not be carried out during the period that the order is subject to review or appeal. If the dog is not killed, the board or governing body may impose reasonable restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reasonable restrictions.

- (8) If the keeper of a dog is charged with violating ORS 609.095 (Dog as public nuisance) (2) or (3) or 609.098 (Maintaining dangerous dog), upon conviction of the keeper the court may determine the disposition of the dog as provided under ORS 609.990 (Penalties for ORS 609.060, 609.095, 609.098, 609.100, 609.169 and 609.405).
- (9) Notwithstanding subsections (2), (3), (6), (7) and (8) of this section, any dog impounded for biting a person shall be held for at least 10 days before redemption or destruction to determine if the dog is rabid.
- (10) Notwithstanding subsections (2) and (3) of this section, if the keeper is charged with violating ORS 609.098 (Maintaining dangerous dog), the dog shall be kept in impoundment pending resolution of the charges. A court may order the keeper to post a deposit with the dog control board or county governing body to cover the cost of keeping the dog in impoundment. If the keeper is convicted of violating ORS 609.098 (Maintaining dangerous dog), the court may order the deposit forfeited to the board or governing body.
- (11) A dog control board or county governing body may impose lesser fees or penalties under subsections (3) and (6) of this section for certain senior citizens under certain circumstances. [Amended by 1953 c.571 §2; 1957 c.79 §2; 1963 c.237 §1; 1963 c.585 §1; 1967 c.495 §2; 1969 c.677 §4; 1973 c.655 §3; 1975 c.499 §1; 1977 c.802 §6; 1999 c.658 §§6,6a; 2001 c.636 §7; 2005 c.840 §5]

...

## Notes of Decisions

Where plaintiff underwent series of rabies shots because defendant city destroyed dog that bit him before determination of whether dog did or did not have rabies, this section could be used to measure standard of care of officials who impounded dog in determining whether conduct of officials was reasonable under existing circumstances. *Jones v. City of Prairie City*, 86 Or App 701, 740 P2d 236 (1987)

Chapter 609

## Atty. Gen. Opinions

Possession and administration of sodium pentobarbital by county animal control program, (1982) Vol 42, p 297

## Related Statutes<sup>3</sup>

- 609.093  
Considerations prior to disposing of chasing, menacing or biting dog
- 609.155  
Impoundment for harming or chasing livestock

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 609—Dogs; Exotic Animals; Dealers*, <http://www.leg.state.or.us/ors/609.html> (2011) (last accessed Mar. 25, 2012).

<sup>2</sup> Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2011, Chapter 609*, <http://www.leg.state.or.us/ors/annos/609ano.htm> (2011) (last accessed Mar. 25, 2012).

<sup>3</sup> OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

Copyright 2013 by WebLaws.org  
[www.oregonlaws.org](http://www.oregonlaws.org)

**2011 ORS § 609.030<sup>1</sup>****Establishing dog control district**

- **appointment of supervisors**
- **enforcement**
- **county governing body as supervisors**
- **dog control officer**

- (1) The governing body of any county may declare the county a dog control district.
- (2) Upon declaration of the dog control district the county governing body may appoint a board of supervisors, and provide for the terms, compensation and other aspects of service by board members, at least two of whom shall be connected directly or indirectly with the livestock industry.
- (3) The board may issue licenses and enforce all of the county and **state** laws relating to the control of dogs within the county, including that of making arrests and shall perform such other duties as the county governing body may assign to it.
- (4) The county governing body may elect to act as the board of supervisors of the dog control district.
- (5) The county governing body may provide for appointment of a dog control officer and otherwise provide for administration and enforcement of a dog control program. [Amended by 1957 c.79 §1; 1963 c.398 §1; 1975 c.297 §1; 1977 c.189 §9]

...

Chapter 609

**Atty. Gen. Opinions**

Possession and administration of sodium pentobarbital by county animal control program, (1982) Vol 42, p 297

## Related Statutes<sup>3</sup>

- 609.015  
Application of ORS 609.030 and 609.035 to 609.110
- 609.035  
Definitions for ORS 609.035 to 609.110 and 609.990
- 609.090  
Impounding certain dogs
- 609.095  
Dog as public nuisance
- 609.100  
Dog licenses, tags and fees

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 609—Dogs; Exotic Animals; Dealers*, <http://www.leg.state.or.us/ors/609.html> (2011) (last accessed Mar. 25, 2012).

<sup>2</sup> Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2011, Chapter 609*, <http://www.leg.state.or.us/ors/annos/609ano.htm> (2011) (last accessed Mar. 25, 2012).

<sup>3</sup> OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

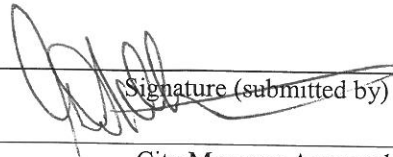
Copyright 2013 by WebLaws.org  
[www.oregonlaws.org](http://www.oregonlaws.org)

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: February 24, 2014

Originating Dept: City Manager

  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

Subject: Ordinance repealing Brookings Municipal Code Chapter 9.15, Tobacco Sales

Recommended Action:

Adopt Ordinance 14-O-728, repealing Brookings Municipal Code Chapter 9.15, Tobacco Sales.

Financial Impact:

None.

Background/Discussion:

The City Council discussed the repeal of Chapter 9.15, Tobacco Sales, at its February 3, 2014 Workshop. Chapter 9.15, Tobacco Sales, provides, among other things, that the City collect a \$20.00 license fee from any business that sells tobacco products. This fee is in addition to any other business license or state license fee.

The Ordinance adopting this Chapter was enacted in 2000. The stated purpose of the ordinance is to “prevent the illegal sale of an access to cigarettes and other tobacco products to minors.” In addition to the license fee provisions, the Chapter:

- Prohibits tobacco vending machines in motels.
- Prohibits all types of self-service sale of tobacco products.
- Prohibits placement of tobacco advertising below 36 inches from the floor of a building.

In reviewing this matter with Finance and Police management, it appears that this regulation has never been implemented. The City does not currently collect an additional \$20.00 annual license fee from businesses that sell tobacco and does not issue tobacco sales licenses. With the exception of the sign restriction, the above listed regulations are contained in State Law. Specifically:

- ORS 167.402 prohibits the location of vending machines in all locations, except in an establishment where the premises are posted as off limits to minors.
- ORS 167.407 prohibits retailers from placing tobacco products in a location where customers can access the product without the assistance of an employee, unless the store is off-limits to minors.

Retailers are not required to have a State license to sell tobacco.

According to the City Attorney, it is legal for a City to require a retailer to obtain a City license to sell tobacco products.

Staff recommends repealing the chapter on Tobacco Sales.

Policy Considerations:

While the regulation may have been well-meaning at the time, it may no longer be necessary as there is a substantial body of State and Federal law regulating the sale and access to tobacco products by minors.

Attachment(s):

- a. Ordinance 14-O-728
- b. BMC Chapter 9.15.
- c. "Access to Tobacco and Youth Possession of Tobacco" except from Department of Health Services website.

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 14-O-728**

**IN THE MATTER OF ORDINANCE 14-O-728, AN ORDINANCE REPEALING BROOKINGS MUNICIPAL CODE CHAPTER 9.15, TOBACCO SALES.**

Sections:

- Section 1. Ordinance identified.
- Section 2. Repeals Chapter 9.15

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance repeals Brookings Municipal Code Chapter 9.15, Tobacco Sales.

Section 2. Repeals Chapter 9.15: Chapter 9.15, Tobacco Sales, is hereby repealed.

First Reading:	_____	Passage:	_____
Second Reading:	_____	Effective Date:	_____

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2014

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

\_\_\_\_\_  
City Recorder Joyce Heffington

## **Chapter 9.15 TOBACCO SALES**

### **Sections:**

#### **Article I. Sale and Distribution of Tobacco and Tobacco Products**

- [9.15.010](#) Title.
- [9.15.020](#) Purpose.
- [9.15.030](#) Definitions.
- [9.15.040](#) License required.
- [9.15.050](#) Fee.
- [9.15.060](#) Nontransferability.
- [9.15.070](#) Vending machines.
- [9.15.080](#) Vendor-assisted sales.
- [9.15.090](#) Revocation of license.
- [9.15.100](#) Advertising placement.
- [9.15.110](#) Enforcement.

#### **Article II. Vendor-Assisted Tobacco Sales**

- [9.15.120](#) Title.
- [9.15.130](#) Findings.
- [9.15.140](#) Purpose.
- [9.15.150](#) Definitions.
- [9.15.160](#) Vendor-assisted sales.
- [9.15.170](#) Scope of provisions.
- [9.15.180](#) Nonretaliation.
- [9.15.190](#) Penalties.

#### **Article I. Sale and Distribution of Tobacco and Tobacco Products**

##### **9.15.010 Title.**

This ordinance codified in this article shall be known as an ordinance regulating the sale and distribution of tobacco and tobacco products. [Ord. 00-O-537 § 1.]

##### **9.15.020 Purpose.**

The city council finds that youth addiction to tobacco products is a public health problem with grave health consequences. More than half of all smokers begin smoking before the age of 14, and 90 percent begin by the age of 19. The average age of first use of tobacco products is now 11 to 15 years of age. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Therefore, the purpose of this article is to implement a strict and enforceable system to prevent the illegal sale of and access to cigarettes and other tobacco products to minors. [Ord. 00-O-537 § 2.]

### **9.15.030 Definitions.**

- A. "License" means a license issued by the city of Brookings for the retail sale of tobacco products.
- B. "Licensee" means the holder of a valid license for the retail sale of tobacco products.
- C. "Minor" means any person under 18 years of age.
- D. "Self-service displays" means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of a store employee.
- E. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco or any other form of tobacco or tobacco papers which may be utilized for smoking, chewing, inhalation or other means of ingestion.
- F. "Tobacco vending machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.
- G. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased. [Ord. 00-O-537 § 3.]

### **9.15.040 License required.**

It shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the city for each location in which tobacco products are sold. All such licenses shall be renewed annually and posted in a conspicuous location. [Ord. 00-O-537 § 4.]

### **9.15.050 Fee.**

The fee for such license shall be \$20.00 per year. [Ord. 00-O-537 § 5.]

### **9.15.060 Nontransferability.**

A tobacco retail license is nontransferable, except a new license, with no fee required, will be issued to a tobacco retailer who changes location. [Ord. 00-O-537 § 6.]

### **9.15.070 Vending machines.**

Tobacco vending machines or any other devices for the sale or distribution of tobacco products are prohibited in any hotel/motel. [Ord. 00-O-537 § 7.]

### **9.15.080 Vendor-assisted sales.**

It shall be unlawful for any person, business, or retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales or a vending machine, where authorized by law. [Ord. 00-O-537 § 8.]

### **9.15.090 Revocation of license.**

Any license holder who violates BMC [9.15.080](#) shall be fined and have their license suspended as follows:

- A. In the case of a first violation, the licensee shall be fined up to \$200.00 and shall be notified in writing of penalties levied for further violations.
- B. In the case of a second violation in a two-year period, the licensee shall be fined up to \$500.00 and the license shall be suspended for not less than 30 consecutive days nor more than three months. Licensee must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

C. In the case of three or more violations within a two-year period, the licensee shall be fined up to \$1,000 and the license shall be revoked not less than six months nor more than 18 months from the date of revocation. Licensee must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. [Ord. 00-O-537 § 9.]

#### **9.15.100 Advertising placement.**

No tobacco product advertising shall be placed below 36 inches, as measured from the establishment's natural floor. [Ord. 00-O-537 § 10.]

#### **9.15.110 Enforcement.**

Violations of BMC [9.15.040](#) and [9.15.070](#) are subject to a fine of \$500.00 per day for each violation. The city attorney or city manager and the police department shall have the authority to enforce this article. [Ord. 00-O-537 § 11.]

### **Article II. Vendor-Assisted Tobacco Sales**

#### **9.15.120 Title.**

This ordinance codified in this article shall be known as the vendor-assisted tobacco sales ordinance. [Ord. 01-O-543 § 1.]

#### **9.15.130 Findings.**

The city council finds that:

- A. Youth addiction to tobacco products is a public health problem with grave health consequences;
- B. Tobacco use is the leading preventable cause of death in Curry County;
- C. Each day in Oregon, the equivalent of a classroom full of children begins smoking. In Curry County, 22 percent of students begin smoking before age 13, 28 percent of high school students smoke and six percent chew tobacco;
- D. More than half the tobacco retail outlets in Curry County have self-service tobacco displays where customers, including young people, have access to cigarettes, spit tobacco and cigars without the assistance of a store employee;
- E. Cigarettes are the item more frequently taken by shoplifters. [Ord. 01-O-543 § 2.]

#### **9.15.140 Purpose.**

The purpose of this article is to limit the sale of tobacco products to minors by way of vendor-assisted tobacco sales. [Ord. 01-O-543 § 3.]

#### **9.15.150 Definitions.**

- A. "Minor" means any person under 18 years of age.
- B. "Self-service displays" means open display of tobacco products to which the public has access without the assistance of a store employee.
- C. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.
- D. "Tobacco retail store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

E. “Vendor-assisted” means only a store employee has access to the tobacco product and assists the customer by supplying the tobacco product; the customer does not take possession of the tobacco product until after it is purchased. [Ord. 01-O-543 § 4.]

**9.15.160 Vendor-assisted sales.**

Except as provided in BMC [9.15.170](#), no person or business may sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any means other than vendor-assisted sales. [Ord. 01-O-543 § 5.]

**9.15.170 Scope of provisions.**

This article shall not apply to tobacco vending machines regulated by Oregon State law, tobacco retail stores, or to any business, retailer or establishment which is licensed by the Oregon Liquor Control Commission for a dispensing license and required to be posted preventing any minors from access to the premises. [Ord. 01-O-543 § 6.]

**9.15.180 Nonretaliation.**

No person or employee may discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of this article. [Ord. 01-O-543 § 7.]

**9.15.190 Penalties.**

Violation of this article shall be punishable by a fine not to exceed \$250.00. The city manager and the police department shall have the authority to enforce this article. [Ord. 01-O-543 § 8.]

# **I. Access to Tobacco and Youth Possession of Tobacco**

## **I. Access to Tobacco and Youth Possession of Tobacco**

### **Location of Vending Machines**

#### **State**

Oregon law prohibits vending machines that supply tobacco products from being located in any place except an Oregon Liquor Control Commission-licensed establishment that is posted as off limits to minors with a Number I Minor Posting, which states “No Minors Permitted Anywhere on This Premises.” Such establishments include certain bars, taverns, and cocktail lounges. Selling tobacco from vending machines in any other location is a Class B violation. Local jurisdictions are preempted from passing stronger laws.

#### ***Enforcement***

Local law enforcement authorities

#### ***Citation***

ORS 167.402 Locating tobacco vending machines.

(1) As used in this section, “vending machine” means a mechanical, electronic or similar device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco products.

(2) A person may not sell or dispense tobacco products, as defined in ORS 431.840, from a vending machine, except in an establishment where the premises are posted as permanently and entirely off-limits to minors under rules adopted by the Oregon Liquor Control Commission.

(3) Violation of subsection (2) of this section is a Class B violation. Each day of violation constitutes a separate offense. [1991 c.970 §2; 1999 c.1051 §162; 2009 c.600 §1]

[www.leg.state.or.us/ors/167.html](http://www.leg.state.or.us/ors/167.html)

### **Restriction on Free Distribution of Tobacco Products**

#### **Federal**

The federal Family Smoking Prevention and Tobacco Control Act (2009) prohibits all tobacco sampling except the distribution of free samples of smokeless tobacco in qualified adult-only facilities.

# I. Access to Tobacco and Youth Possession of Tobacco

## ***Enforcement***

U.S. Food and Drug Administration

Consumers can call FDA at 1-877-CTP-1373, option 4, to report a violation.

Complaints are forwarded to FDA's Office of Compliance, which will follow up with complainants by phone in one to three business days.

## **State**

Oregon law prohibits the distribution of free tobacco products to people under 18 years old. Free samples of *smokeless tobacco* may not be given to anyone under the age of 21 or distributed in any area in which people under the age of 21 are allowed; a violation of this law is a Class A misdemeanor.

## ***Enforcement***

Local law enforcement authorities

## ***Citation***

ORS 431.840 (1) (a) Free distribution to minors prohibited; restriction on sales; notice.

(1) It shall be unlawful to do any of the following:

(a) To distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products.

[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

(1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than \$100 nor exceed \$500.

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

[www.leg.state.or.us/ors/431.html](http://www.leg.state.or.us/ors/431.html)

ORS 180.486 Prohibited conduct; penalty.

(1) A person may not:

(d) Distribute, in this state, free samples of smokeless tobacco products:

(A) To persons under 21 years of age; or

## **I. Access to Tobacco and Youth Possession of Tobacco**

(B) In any area, unless access by persons under 21 years of age to that area is prohibited.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported smokeless tobacco products that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2009 c.717 §13]

ORS 180.468 Definitions.

As used in ORS 180.465 to 180.494:

(6) "Smokeless tobacco products" has the meaning given that term in ORS 323.810.

[www.leg.state.or.us/ors/180.html](http://www.leg.state.or.us/ors/180.html)

ORS 323.810 Definitions for ORS 323.810 to 323.816.

As used in ORS 323.810 to 323.816:

(7) "Smokeless tobacco products" means moist snuff, as defined in ORS 323.500, or chewing tobacco, as defined in section 5702 of the Internal Revenue Code.

ORS 323.500 Definitions for ORS 323.500 to 323.645.

As used in ORS 323.500 to 323.645, unless the context otherwise requires:

(9) "Moist snuff" means:

(a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in a nasal cavity; or

(b) Any other product containing tobacco that is intended or expected to be consumed without being combusted.

<http://www.leg.state.or.us/ors/323.html>

26 U.S.C. § 5702. Definitions

(m) Definitions relating to smokeless tobacco

(3) Chewing tobacco

The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked.

[www.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00005702----000-.html](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005702----000-.html)

# **I. Access to Tobacco and Youth Possession of Tobacco**

## **Purchase or Possession of Tobacco by Minors**

### **State**

Oregon law prohibits a person under the age of 18 from buying or obtaining tobacco products. It is also illegal for a minor to possess tobacco products, except inside a private residence with the consent of the minor's parent or guardian. Any person who violates this law may be required to participate in a tobacco education program, a tobacco use cessation program, or community service that is associated with tobacco-related diseases. Minors acting under the supervision of an adult may engage in "controlled buys" – attempts to purchase tobacco for the purpose of testing retailers' compliance with Oregon's laws concerning retail sales of tobacco.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 167.400 Tobacco possession by minors prohibited.

(1) It is unlawful for any person under 18 years of age to possess tobacco products, as defined in ORS 431.840.

(2) Any person who violates subsection (1) of this section commits a Class D violation. [1991 c.970 §1; 1999 c.1051 §161]

ORS 167.401 Tobacco purchase by minors prohibited; exceptions.

(1) Except as provided in subsection (4) of this section, no person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products as defined in ORS 431.840. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products.

(2) Any person who violates subsection (1) of this section commits a violation.

(3)

(a) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of subsection (1) of this section may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with consumption of tobacco products. A person may be ordered to participate in such a program only once.

(b) In addition to and not in lieu of any other penalty established by law, a

## I. Access to Tobacco and Youth Possession of Tobacco

person who is convicted of a second violation of subsection (1) of this section through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors. [1999 c.1077 §8]

[www.leg.state.or.us/ors/167.html](http://www.leg.state.or.us/ors/167.html)

### **Retailer Notice about Sales to Minors**

Oregon law requires retailers to post a notice informing the public that selling tobacco products to individuals under 18 is prohibited. Failure to do so will result in a fine ranging from \$100 to \$500.

#### ***Enforcement***

Local law enforcement authorities

#### ***Citation***

ORS 431.840 (1) (b) Free distribution to minors prohibited; restriction on sales; notice.

(1) It shall be unlawful to do any of the following:

(b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3) of this section in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited.

## I. Access to Tobacco and Youth Possession of Tobacco

(3) The notice shall be substantially as follows:

---

### NOTICE

The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits the crime of endangering the welfare of a minor, pursuant to ORS 163.575.

---

[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

(1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than \$100 nor exceed \$500.

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

[www.leg.state.or.us/ors/431.html](http://www.leg.state.or.us/ors/431.html)

## Sale of Tobacco to Minors

### State

Oregon law prohibits selling or distributing tobacco or devices used to burn tobacco to individuals under the age of 18. The minimum fine for each violation is \$100.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 163.575 Endangering the welfare of a minor.

(1) A person commits the crime of endangering the welfare of a minor if the person knowingly:

(d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is

## I. Access to Tobacco and Youth Possession of Tobacco

burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Carburetion tubes and devices, including carburetion masks;

(C) Bongos;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b), (c) or (e) of this section, involving other than a device for smoking tobacco, is a Class A misdemeanor.

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section or by violation of subsection (1)(e) of this section, involving a device for smoking tobacco, is a Class A violation and the court shall impose a fine of not less than \$100. [1971 c.743 §177; 1973 c.827 §20; 1979 c.744 §8; 1981 c.838 §1; 1983 c.740 §31; 1991 c.970 §5; 1995 c.79 §52; 1999 c.1051 §153]

[www.leg.state.or.us/ors/163.html](http://www.leg.state.or.us/ors/163.html)

### Locating Tobacco Products in Retail Stores

#### State

Under Oregon law, retail store owners may not place tobacco products in a location where customers can access the product without the assistance of an employee, unless the store is off limits to individuals under 18 years of age. It is a Class B violation to break this law.

#### ***Enforcement***

Local law enforcement authorities

#### ***Citation***

ORS 167.407 Locating tobacco products where customers can access without store employee prohibited.

## I. Access to Tobacco and Youth Possession of Tobacco

(1) A person having authority over the location of cigarettes and other tobacco products in a retail store may not locate cigarettes or other tobacco products in a location in the store where the cigarettes or other tobacco products are accessible by store customers without assistance by a store employee.

(2) Violation of subsection (1) of this section is a Class B violation. Each day of violation constitutes a separate offense.

(3) Subsections (1) and (2) of this section do not apply if the location at which the cigarettes or tobacco products are sold is a store or other establishment at which persons under 18 years of age are prohibited. [2003 c.804 §84]

[www.leg.state.or.us/ors/167.html](http://www.leg.state.or.us/ors/167.html)

### Tobacco Seller Licensing State

In Oregon, tobacco distributors must obtain licenses in order to distribute tobacco products. Typically, *distributors* sell tobacco to *retailers*, who then sell to the public. Retailers, such as individual stores, are not required to have licenses to sell tobacco products.

#### ***Enforcement***

Oregon Department of Revenue

#### ***Citation***

OAR 150-323.105. When Distributor's License Required

(1) A distributor's license is required for each place of business at which a person engages in the distribution of cigarettes as defined in ORS 323.015(2). A distributor's license is required for any person distributing cigarettes in Oregon, including:

- (a) every cigarette manufacturer selling cigarettes in this state to persons other than licensed distributors;
- (b) Every person who imports cigarettes into this state for sale;
- (c) Every person who obtains untaxed cigarettes from a cigarette manufacturer for resale; and
- (d) Common carriers engaged in interstate or foreign passenger service, who sell cigarettes on their facilities in Oregon, and persons authorized to sell cigarettes on the facilities of such common carriers. For the purpose of this rule "facilities of a common carrier" are limited to the mobile equipment of the carrier used for the transportation of passengers.

# **I. Access to Tobacco and Youth Possession of Tobacco**

[ARCWEB.SOS.STATE.OR.US/RULES/OARS\\_100/OAR\\_150/150\\_323.HTML](http://ARCWEB.SOS.STATE.OR.US/RULES/OARS_100/OAR_150/150_323.HTML)

## **Sales of Tobacco through Mail Order or Internet Sales**

### **Federal**

Pursuant to the PACT Act of 2009, federal law prohibits the sale of untaxed tobacco products through the Internet or by mail order and makes tobacco products nonmailable matter (subject to minor exceptions). Internet- and mail-order sellers may not deliver their merchandise through the U.S. Postal Service, but may continue to use private common carriers and other delivery services. They must also verify the age of customers both at the time of purchase and at the point of delivery.

### ***Enforcement***

The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives for the most part, with the U.S. Postal Service in charge of the nonmailable matter section of PACT.

### **State**

Oregon law forbids the delivery sale of tobacco products to underage individuals. Delivery sellers must obtain signed written certifications that their customers meet the minimum age, as well as a copy of each customer's valid, government-issued identification showing age or date of birth, prior to shipping any tobacco products. Sellers may only accept payment issued in the name of the prospective purchaser (*i.e.*, a debit/credit card or personal check issued in that individual's name) for each sale, and must use a shipping method that requires a signature and photo identification from the customer or another non-minor individual residing at the same address. All delivery sellers must obtain a distributor's license prior to making delivery sales.

### ***Enforcement***

Oregon Department of Justice

### ***Citation***

ORS 323.703 Delivery sales to persons under legal minimum purchase age prohibited. A person may not make a delivery sale of tobacco to a person who is under the legal minimum purchase age. [2003 c.804 §74]

ORS 323.706 Requirements for persons accepting delivery sale purchase orders. A person accepting a purchase order for a delivery sale, prior to the first mailing,