

# CITY OF DAYTON MUNICIPAL CODE

## CHAPTER 1 - ADMINISTRATION

### 1.00.00 GENERAL PROVISIONS

#### 1.00.01 Title of Code

All ordinances included in this and the following chapters are designated the City of Dayton Code of Ordinances, and will be referred to as “code.” When referring to specific sections of the City of Dayton Code, the letters “DC” should precede the numerical designation.

#### 1.00.02 Definitions and Rules of Construction

The following definitions and rules of construction shall be observed, unless inconsistent with the intent of City Council or the context clearly requires otherwise.

“**City Attorney**” means the Chief Legal Officer or designee.

“**Charter**” means the Home Rule Charter adopted by the voters of the City of Dayton.

“**Councilor**” means one of six elected members of the City Council of the City of Dayton.

“**Computation of Time**” means the time within which an act is to be done is computed by excluding the first day and including the last, unless the last falls on a legal holiday as defined in ORS 187.010 OR 187.020, or on a Saturday or Sunday, in which case the last day is also excluded.

“**County**” means Yamhill County, Oregon.

“**Day**” means the period of time between any midnight and the midnight following.

“**Daytime; Nighttime**” Daytime is the period between sunrise and sunset. Nighttime is the period of time between sunset and sunrise.

“**Joint Authority**” Words giving joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

“**Law**” means applicable federal law, the constitution and statutes of the state of Oregon, the code, ordinances, resolutions, and applicable adopted rules and regulations of the county.

“**Manager**” means the City Manager, appointed to the position by the Council under Charter authority.

**“Minor”** means a person under the age of 18 years, unless otherwise stated.

**“Month”** means a calendar month.

**“Number”** The singular number includes the plural and the plural the singular.

**“OAR”** means Oregon Administrative Rule.

**“Oath”** Includes affirmation.

**“Official Time”** When certain hours are named, they mean the standard of time as set out in ORS 187.110.

**“Or; And”** “Or” may be “and,” and “and” may be read “or,” if the sense requires it.

**“Order”** A final determination of the Council in a particular case, usually a quasi-judicial matter under authority of state law.

**“Ordinance”** A Council exercise of legislative authority granted by the Charter and state law.

**“ORS”** means Oregon Revised Statutes.

**“Owner”** means a part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of the building or land, or vendee in possession under a land sale contract.

**“Person”** means an individual, corporation, association, firm, partnership, joint stock company, and similar entities.

**“Personal Property”** means every type of property, except real property as defined in this section.

**“Policy”** means a City policy enacted by ordinance or adopted by resolution.

**“Preceding; Following”** Next before and next after, respectively.

**“Process”** A writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

**“Property”** means both real and personal property.

**“Real Property”** means land, tenements, and hereditaments.

**“Resolution”** A Council exercise of administrative authority granted by the Charter and state law, or authorized by ordinance.

**“Shall; May”** “Shall” is mandatory, and “may” is permissive.

**“Signature”** Includes subscription or mark when the signer cannot write, the signer’s name being written near the mark by a witness who signs near the signer’s name. A signature by subscription or mark as acknowledged serves as a signature to a sworn statement only when two witnesses sign their own names.

**“State”** means the state of Oregon.

**“Tenant or Occupant”** means a person holding a written or an oral lease of, or who occupies, the whole or a part of the building or land, either alone or with others.

**“Tenses”** The present tense includes the past and future tenses, and the future includes the present.

**“To”** means “to and including” when used in reference to a series of sections of this code or the ORS.

**“Week”** means seven consecutive days.

**“Writing”** Includes any form of recorded message capable of comprehension by ordinary visual means. When a notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

**“Year”** means a calendar year, except where otherwise provided.

**1.00.03 Substitute Officers**

Unless this code provides to the contrary, the Mayor, Attorney, or designees or agents, may exercise a power granted by this code. Mayor remains responsible for the performance of such acts.

**1.00.04 Construction of Code**

The provisions of this code and proceedings under it are to be construed so as to effect its objectives and to promote justice.

**1.00.05 Continuation of Ordinances**

Provisions of this code that are the same as those of the prior code sections existing at the time of the effective date of this code shall be considered continuations and not new enactments.

**1.00.06 Effect of Repeal**

The repeal of the prior code does not revive any ordinance in force before or at the time the prior code took effect. The repeal of the prior code does not affect a penalty incurred before the repeal took effect, nor a legal action pending at the time of the repeal.

**1.00.07 Severability**

The sections, subsections, paragraphs, provisions, clauses, phrases, and words of this code are severable. If a section, subsection, paragraph, provision, clause, phrase, or word of this code is declared by a court of competent jurisdiction to be unconstitutional or invalid, the judgment shall not affect the validity of the remaining portions of this code. Every other section, subsection, paragraph, provision, clause, phrase or word of this code enacted, irrespective of the enactment or validity of the portion declared unconstitutional or invalid, is valid.

**1.00.08 Section Catchlines**

The catchlines of the code indicate the contents of each section and are not a part of the substance of the section. The catchlines are not affected by amendments or re-enactments.

**1.00.09 Amendment and Repeal**

- (A) This code is the general and permanent law of the City. The City Council may enact three types of general ordinances to affect this code.
- (B) Ordinances may amend existing provisions, add new provisions, or repeal existing provisions. General ordinances will specifically amend or repeal particular sections of this code. General ordinances creating new code sections will integrate the new sections into the numbering system and organization of this code.

**1.00.10 Editorial Changes**

The city attorney is authorized to make certain editorial changes and corrections in this code, provided such changes do not alter the sense, meaning, effect, or substance of any ordinance. Changes and corrections may include the following:

- (A) Numbering and renumbering sections and parts of sections of ordinances, either as enacted or as codified;
- (B) Changes in the wording of headnotes or catch-lines;
- (C) Rearrangements of sections;
- (D) Changes of reference numbers to agree with renumbered chapters, sections and statutes;
- (E) Substitutions of the proper subsection, section, chapter, or other division numbers;
- (F) Omission of figures or words which are merely repetitious;

- (G) Changes of capitalization and punctuation for purposes of uniformity; and
- (H) Correction of manifest clerical or typographical errors.

**1.00.11**      **Violations – Penalty** *(Added ORD 643, effective 03/06/19)*

- (A) It shall be unlawful for any person or entity to violate any provision or to fail to comply with any requirement imposed by the Dayton Municipal Code. Any person or entity violating any provision or failing to comply with any requirement imposed by this code, unless provision is made specifically otherwise in this code, is subject, upon a determination that such violation or failure has occurred, to a civil penalty set through the City’s Fee Schedule for each day the violation or failure to comply has existed. Any act or omission made unlawful under the city code includes causing, allowing, permitting, aiding, abetting, or concealing such act or omission.
- (B) Any person, firm, association, or corporation violating any provision of the Dayton Municipal Code where the penalty is deemed a civil violation shall be subject to:
  - 1. A civil fine for each violation as set forth on the City’s Fee Schedule and as determined by the Class of violation.
- (C) In establishing the amount of any civil penalty, a Court (including the Municipal Court) should consider any of the following factors that the court deems relevant:
  - 1. The actions taken by the person or entity to mitigate or correct the violation;
  - 2. Whether the violation or the failure to comply is repeated or continuous in nature;
  - 3. The magnitude or gravity of the violation or failure to comply;
  - 4. The cooperativeness of the person or entity with the City;
  - 5. The cost to the City of investigating, correcting, attempting to correct and/or prosecuting the violation or failure; and
  - 6. Any other factor deemed by the Court to be relevant.

**1.0012**      **Attorneys’ Fees** *(Added ORD 643, effective 03/06/19)*

In the event that City elects to enforce the terms of its ordinances or resolutions consistent with ORS 30.315 (2017), a court (including an Appellate Court) may, in its discretion, award attorney’s fees to the prevailing party.

**1.00.13 Interest on Monies Owed City** *(Added ORD 643, effective 03/06/19)*

Unless specifically agreed to otherwise via a duly approved contract or agreement between the City and some third party or unless otherwise specifically set out in another provision of this code, any and all amount(s) due and owing the City of Dayton from and after March 5, 2019, shall accrue interest at the legal rate as the same is set forth in ORS Chapter 82 from the time it becomes due until fully paid.

**1.01.00 ELECTIONS**

**1.01.01 Introduction**

**1.01.02 State Law Applies**

As provided by Charter section 26, state elections laws apply to matters not regulated by this subchapter. The Charter and this subchapter prevail over any conflicting state laws.

**1.01.03 Definitions**

Words or phrases have the following meanings unless the context clearly requires a different meaning:

**“Candidate”** means an individual whose name appears or is expected to appear on an official city ballot.

**“City legislation”** means an ordinance or proposed ordinance, or a proposed amendment, revision or repeal of the Charter.

**“Elective city position”** means the office of mayor or councilor.

**“Elector”** means an individual eligible under state and City law to vote in city elections.

**“Initiative”** means proposed city legislation submitted to electors by a petition of qualified electors

**“Measure”** means City legislation, or a proposition or question submitted by the Council to City electors

**“Prospective petition”** means information required for a completed petition, except for signatures and other identification of petition signers

**“Qualified elector”** means an individual qualified to vote under section 2, Article II, Oregon Constitution

**“Recorder”** means the city recorder or designee

**“Referendum”** means City legislation submitted to electors by the Council or by a petition of qualified electors, or a proposition or question submitted to City electors by the Council

**“Regular election”** means a city election held at the same time as a primary or general biennial election for electing federal, state or county officers

**“Special election”** means a City election not held on the date of a regular election

**“Term of office”** means the term of office of the last person elected to the office

**1.02.00 CANDIDATES**

**1.02.01 Eligibility**

A qualified elector who has resided in the City during the 12 months immediately preceding the election may be a candidate for an elective City position.

**1.02.02 Nomination Petition or Declaration of Candidacy**

- (A) An eligible elector may become a candidate for an elective City position by filing a nomination petition or a declaration of candidacy in a form prescribed by the Secretary of State and available from the recorder.
- (B) A declaration of candidacy must be accompanied by the filing fee established by Council resolution.
- (C) A nomination petition must contain signatures of not fewer than 10 qualified City electors as follows:
  - (1) No elector may sign more than three petitions. If more than three are signed, the signature is valid only on the first three valid petitions filed.
  - (2) The signatures need not all be attached to one paper, but each separate paper of the petition must be attached to an affidavit of the circulator showing the number of signers and stating that each signature is the genuine signature of the person.
  - (3) Each signature must have next to it the signer’s residence, by its street and number or other description.
  - (4) The recorder must certify the signatures in the nomination petition for genuineness by comparing them and the other required information with the elector registration cards on file with the county clerk.
  - (5) After the petition is filed with the recorder, the recorder has 10 days to verify the signatures, and attach to the petition a certificate stating the number of signatures believed genuine.

**1.02.03      Petition or Declaration Contents**

- (A) A nomination petition or declaration of candidacy must contain:
  - (1) The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in addition to the candidate’s full name;
  - (2) The residence address of the candidate;
  - (3) The office or position number for which the candidate seeks nomination;
  - (4) A statement that the candidate is willing to accept the office if elected;
  - (5) A statement that the candidate will qualify if elected;
  - (6) A statement of the candidate’s occupation, educational and occupational background, and prior governmental experience; and
  - (7) The signature of the candidate.
- (B) A declaration of candidacy must include a statement that the required fee is included with the declaration.

**1.02.04      Filing**

- (A) A nomination petition or declaration of candidacy must be filed with the recorder.
- (B) The recorder will date and time stamp immediately upon filing a nominating petition, declaration of candidacy, withdrawal or other document required to be filed.
- (C) A nomination petition or declaration of candidacy will be filed not sooner than the first day of June of the election year and not later than 75 days before the election date.

**1.02.05      Deficient Petitions**

If a nomination petition is not signed by the required number of electors or the declaration of candidacy is not complete, the recorder will notify the candidate within five days after the filing. The recorder will return it immediately to the candidate, and state in writing how the petition is deficient. The deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed within the time requirements for filing petitions.



**1.02.06            Withdrawal of Candidacy; Refund of Filing Fee**

- (A)    A candidate who has filed a nomination petition or declaration of candidacy may withdraw not later than the 67th day before the election date by filing a statement of withdrawal with the recorder. The withdrawal must be made under oath and state the reasons for the withdrawal.
- (B)    If requested not later than 67 days before the election date, the recorder will refund the filing fee of a candidate who dies, withdraws or becomes ineligible for the nomination.

**1.02.07            Certificate of Nomination**

The recorder will certify the nominations to the county clerk in accordance with the time requirements of state law stating the offices and the terms of office for which the candidates are nominated.

**1.03.00            VACANCIES IN OFFICE**

**1.03.01            Vacancy in Office**

A city elective office becomes vacant as provided by Charter section 32.

**1.03.02            Filling of Vacancy**

- (A)    Upon becoming aware of a vacancy in an elective office, the Council must promptly determine and declare the date of vacancy.
- (B)    A vacancy in an elective office must be filled as provided by Charter section 33.

**1.03.03            Appointment by Council**

- (A)    In filling a vacancy, the Council may make inquiries and hold interviews as it considers necessary for the appointment. The appointment may be made at a regular or special Council meeting.
- (B)    The Council will use the following procedures in the appointment process:
  - (1)    Public notice to appropriate neighborhood organizations, civic groups, a newspaper of general circulation and other recognized groups.
  - (2)    Deadline for submitting applications at least two weeks after the notice.
  - (3)    Appointment from those applicants nominated and seconded for consideration by members of the Council. The recorder will announce the results of each ballot and will record each councilor's ballot. An applicant who receives a majority of

the votes by the current Council members will be appointed to the vacant position. If no applicant receives a majority vote on the first ballot, the council will continue to vote on the two applicants who receive the most votes until an applicant receives a majority of the councilors voting.

## **1.04.00 INITIATIVE AND REFERENDUM**

### **1.04.01 Prospective Petition**

- (A) Before circulating a petition proposing an initiative or referendum for City legislation, the chief petitioners must file a prospective petition with the recorder. The recorder will provide the form showing:
  - (1) The signatures, printed names and mailing addresses of at least two and not more than three chief petitioners, all of whom must be City electors;
  - (2) For initiative petitions, the text of the city legislation proposed for adoption, and, where applicable, the title, ordinance number, and Charter or code section numbers proposed for amendment, revision or repeal;
  - (3) For referendum petitions, the text of the City legislation proposed for referral, and where applicable, the title, ordinance number or code section numbers of the City legislation proposed for referral; and
  - (4) Whether one or more persons will be paid for obtaining signatures on the petition.
- (B) The recorder must date and time stamp any prospective petition filed.
- (C) After the recorder determines that the prospective petition complies with this subchapter and state law, the recorder will certify to one of the chief petitioners that petitions may be circulated among City electors in accordance with section 1.02.15.

### **1.04.02 Ballot Title; Appeal**

- (A) Prior to the end of the fifth business day after a prospective initiative petition is filed and meets all legal requirements, the recorder will review the text of the proposed initiative to determine if it complies with the single subject requirement and if it proposes City legislation.
- (B) If the proposed text does not meet the requirements of subsection A, the recorder will notify one of the chief petitioners by certified mail,

return receipt requested, that the prospective petition does not meet the single subject or City legislation requirement.

- (C) Any City elector dissatisfied with the recorder's determination may file a petition for review in circuit court. The petition for review must be filed not later than the seventh business day after the written determination by the recorder.
- (D) If the proposed initiative meets the requirements of subsection A or a referendum petition is certified for circulation, the recorder will send two copies of the prospective petition to the city attorney. The city attorney has five business days after receipt to prepare a ballot title for the proposed measure for the voter's pamphlet. The ballot title must conform to the requirements of state law.
  - (1) The explanatory statement must consist of an impartial, simple and understandable statement of not more than 500 words explaining the measure and its effect.
  - (2) After preparing the ballot title, the city attorney will return one copy of the prospective petition and ballot title to the recorder and one copy to one of the chief petitioners.
- (E) After receiving a ballot title from the city attorney, the recorder must publish in a newspaper of general circulation in the city a notice of receipt of the ballot title. The notice must state that a city elector may file a petition for review of the ballot title not later than the date referred to in subsection F.
- (F) After receiving the prospective petition and ballot title from the city attorney, the recorder must write the date of receipt on it. Within seven business days after that date, any city elector may petition in circuit court to challenge the ballot title prepared by the city attorney. After the seven-day period, or following the final adjudication of any legal review, the recorder must certify the ballot title as prepared by the city attorney or as prescribed by the court to one of the chief petitioners.
- (G) Any City elector filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.
- (H) The procedures in subsections A through G also apply to referendum by petition measures. However, the completion of these procedures is not a prerequisite to the circulation of petitions for referendum measures under section 1.02.15. Ballot titles need not be stated on petitions circulated to propose referendum measures.

**1.04.03      Petition and Circulation Requirements**

- (A) After the requirements of section 1.02.13C are met for referendum petitions, and after the requirements of section 1.02.14F are met for initiative petitions, the chief petitioners may circulate a petition for the measure among City electors. The petition (cover sheet and signature sheet) must conform to the requirements of state law.
- (B) The petition identification number will be assigned by the recorder.
- (C) Each signature sheet of a referendum petition must contain the title, ordinance number or code section numbers of the City legislation proposed by referral and the date it was adopted by the Council.
- (D) No signature sheet may be circulated by more than one person. Each signature sheet must contain a statement signed by the circulator that each elector who signed the sheet did so in the circulator's presence, and, to the best of the circulator's knowledge, each such elector is a legal elector of the City and that the information placed on the sheet by each such elector is correct.

**1.04.04      Filing and Percentage Requirements; Verification**

- (A) The recorder will accept for signature verification only petitions that comply with the requirements of this subchapter and other applicable law.
- (B) No petition may be accepted for filing unless it contains at least the required number of verified signatures to submit the measure to the electors, as prescribed by subsections G, H or I.
- (C) No initiative petition may be accepted for signature verification more than six months after the date of the recorder's certification under section 1.02.14F.
- (D) Any petition to refer legislation adopted by the Council must be submitted for signature verification not more than 30 days after the council's adoption of the legislation.
- (E) An initiative or referendum petition may not be accepted for signature verification if it contains less than 100 percent of the required number of signatures.
- (F) Upon the acceptance of a petition, the recorder must verify the signatures. The verification may be performed by random sampling in a manner approved by the Secretary of State. Within 30 days after the recorder's acceptance of a petition, the recorder must certify to the council whether the petition contains a sufficient number of qualified signatures to require the submission of the proposed measure to City electors. The recorder must state in the certificate the number of qualified signatures prescribed by subsections U, H or

I to require the proposed City legislation to be submitted to City electors. The petition is considered filed as of the date of the recorder's certification.

- (G) An initiative measure proposing the amendment, revision or repeal of the Charter will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the City on January 1 of the calendar year the petition is filed.
- (H) An initiative measure proposing the adoption, amendment or repeal of any other City legislation will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the City on January 1 of the calendar year the petition is filed.
- (I) A referendum measure will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 10 percent of the total number of registered voters in the City on January 1 of the calendar year the petition is filed.

**1.04.05 Measure Referred by Council**

- (A) The Council may directly refer to the electors any ordinance or any proposed ordinance, property tax, bond or other proposition or question. It may also directly refer to the electors any proposed amendment, revision or the repeal of the Charter.
- (B) The city attorney will prepare a ballot title and explanatory statement that conforms to the requirements of state law. The Council will certify and file the ballot title and explanatory statement with the recorder.
- (C) The recorder will publish in a newspaper of general circulation in the City a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date set in subsection D.
- (D) Any City elector may petition the circuit court to challenge the ballot title certified by the Council. Such petition must be filed with the circuit court within seven business days of Council filing of the ballot title. Any person filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.
- (E) A measure is filed under this section as of the date the Council delivers its certified ballot title to the recorder.

- (F) The recorder may file the measure and the certified ballot title with the county clerk to meet the time requirements of state law for the next election whether or not the time has passed for filing a circuit court petition for review of the ballot title.

**1.04.06      Withdrawal, Adoption or Election**

- (A) The chief petitioners may withdraw a verified petition at any time before Council action to adopt the proposed legislation or submit it to the electors. Any withdrawal must be either by written declaration or oral declaration made at a council meeting and entered in the minutes of that meeting.
- (B) Unless a petition is withdrawn, after receiving a certification from the recorder that a petition has sufficient signatures to require the proposed City legislation to be submitted to the electors under section 1.02.16F, the Council may either adopt the proposed legislation by ordinance, or call an election to submit the legislation to the electors. The Council may also call an election to submit matters to the electors upon referral under section 1.02.17.
- (C) The Council must call the election on the next election date available under state law that is not sooner than the 90th day after the date of the recorder’s certificate of sufficient signatures. For a Council referral, the election on the referendum of City legislation may be held on the next election date available under state law.

**1.04.07      Election Notice and Results**

- (A) Notice of elections on measures submitted to City electors on regular or special election dates must be given in accordance with state law.
- (B) Measures referred by the Council will be designated on the ballot: “Referred to the Voters by the City Council.”
- (C) Measures proposed by referendum petition will be designated on the ballot: “Referred by Petition.”
- (D) Measures proposed by initiative petition will be designated on the ballot: “Proposed by Initiative Petition.”
- (E) The recorder must certify the election results to the Council at the first Council meeting after the results are certified by the county clerk.
- (F) A measure adopted by the electors takes effect 30 days after the election, unless such measure expressly provides a later effective date.

## **1.05.00 MAYOR, COUNCIL PRESIDENT AND COUNCILOR DUTIES**

### **1.05.01 Mayor Duties**

- (A) The mayor is chair of the Council and the political head of the city government.
- (B) The duties of the mayor include:
  - (1) Preside over all Council deliberations and with authority to preserve order, enforce rules of the Council, and determine council order of business;
  - (2) Vote on all questions before the Council;
  - (3) Sign all records of proceedings approved by the Council;
  - (4) Meet with manager to prepare Council agendas and review items for presentation to the Council
  - (5) Represent the city at county, regional, state and other meetings of elected officials
  - (6) Appoint City committees and commissions with the consent of Council
  - (7) Appoint Council liaisons to City committees;
  - (8) Respond to correspondence directed to the mayor or Council on topics relating to Council policy; and
  - (9) Declare a state of emergency due to disaster and request state and federal assistance without a special meeting of the Council.

### **1.05.02 Council President Duties**

- (A) The council president is a member of the Council elected from its membership at its first meeting each year.
- (B) The duties of the council president include the following:
  - (1) Attend and participate at Council meetings;
  - (2) Vote on all questions before Council;
  - (3) Preside at Council meetings in the absence of mayor;

- (4) Act as mayor whenever the mayor is unable to perform the functions of that office;
- (5) In absence of mayor, declare state of emergency due to disaster and request state and federal assistance without a special meeting of the Council; and
- (6) Represent city in absence of mayor.

**1.05.03 Councilor Duties**

- (A) Each councilor is a member of the Council.
- (B) The duties of each councilor include the following:
  - (1) Attend and participate at Council meetings;
  - (2) Vote on all questions before Council;
  - (3) Represent Council as liaison at committee meetings; and
  - (4) Represent city in absence of mayor and council president.

**1.06.00 COUNCIL PROCEDURE**

**1.06.01 Meetings**

The Council must meet at least once each month in the fire hall.

**1.06.02 Presiding Officer**

The mayor is the presiding officer, preserve order, and enforce the Council rules. The council president presides in the absence of the mayor.

**1.06.03 Voting**

All decisions will be voted on by affirmation and the result of all votes recorded in the Council minutes. Councilors present when a question is called must vote unless excused by the Council.

**1.06.04 Suspension of Rules**

No Council rule may be added, amended, rescinded or suspended, except by the vote of a majority of Council members present at the meeting at which the action is taken.

**1.06.05 Reconsideration**

When a question has been decided, any councilor who voted in the majority may move for reconsideration. Any motion to reconsider must be made



prior to adjournment of the meeting at which final action is taken on the matter in question.

**1.06.06 Motions, Debate and Withdrawal**

Motions shall be distinctly stated by the maker or presiding officer and may be debated without being seconded. Motions shall be read by the manager when required by the Council. A motion may be withdrawn at any time before amendment.

**1.06.07 Ordinance Preparation**

Ordinances may be prepared by the attorney. No ordinance may be prepared for presentation to the Council unless directed by a majority of the Council, requested by the mayor or manager, or prepared by the attorney with the approval of the mayor or manager.

**1.06.08 Rules of Order**

All circumstances not covered by Council rules, this code or the Charter will be governed by Robert's Rules of Order, Newly Revised as interpreted by the attorney.

**1.07.00 HEARINGS**

**1.07.01 Impartiality of Hearings**

(A) Except for legislative hearings conducted by the Council, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge must state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, or other facts from which the challenger concludes that the member of the hearing body cannot participate in an impartial manner. Except for good cause shown, a challenge must be delivered to the manager no less than 48 hours before the time set for public hearing.

(B) Prior to the meeting, the manager will attempt to notify the person whose qualifications are challenged. The challenged person will have an opportunity to respond orally and in writing to the challenge. The challenge and the response will be incorporated into the record of the hearing.

**1.07.02 Disqualification of Members**

Except for legislative hearings conducted by the Council, a member of a hearing body may not participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

- (A) The following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
- (B) The member owns property within the area entitled to receive notice of the public hearing.
- (C) The member has a direct private interest in the proposal.
- (D) For any other valid reason, the member determines that impartial participation in the hearing and decision is not possible.

**1.07.03 Participation by Interested Officers or Employees**

No City officer or employee who has a financial or other private interest in a proposal may participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

**1.07.04 Ex Parte Contacts**

Except for legislative hearings conducted by the Council, the public has a right to have hearing body members free from pre-hearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members must reveal any significant pre-hearing or ex parte contacts with regard to any matter at the beginning of the public hearing on the matter. If such contacts do not impair the member's impartiality or ability to vote on the matter, the member must so state and then participate in matter..

**1.07.05 Abstention or Disqualification**

Except for legislative hearings conducted by the Council, disqualification for reasons other than the member's own judgment may be ordered by two-thirds of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

**1.07.06 Rights of Disqualified Member**

- (A) An abstaining or disqualified member of the hearing body will be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, and making full disclosure at the time of addressing the hearing body.

- (B) If all members of a hearing body abstain or are disqualified, all members present, after stating their reasons for abstention or disqualification, will be re-qualified and proceed to resolve the issues.
- (C) Except for legislative hearings conducted by the Council, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member reviews the evidence received.

**1.08.00 COMMISSIONS, COMMITTEES AND TASK FORCES**

**1.08.01 Creation**

Commissions, committees, task forces, and other advisory bodies, including those of a temporary nature or created for a specific purpose, may be established by ordinance or resolution. Council may establish by resolution rules and practices for advisory bodies.

**1.08.02 Structure**

Every advisory body will have a specific statement of purpose that will be reexamined periodically by the Council to determine its effectiveness.

**1.08.03 Appointment of Members**

Members of all advisory bodies including those of a temporary nature or those created for a specific purpose will be appointed by the mayor with confirmation of the Council.

**1.08.04 Dissolution**

The mayor and Council may dissolve any advisory body, except those required by state law.

**1.09.00 PLANNING COMMISSION**

**1.09.01 Planning Commission**

- (A) There is a City planning commission with five members appointed by the mayor with the approval of the Council. Not more than one member may reside outside of the City.
- (B) The commission will represent a range of professions, and contain no more than two members who are engaged in the same kind of occupation, business, trade or profession. At least one member, but no more than two, may be engaged principally in buying, selling, or developing real estate.

**1.09.02 Term of Office**

Each member of the commission serves a four-year term, unless removed by the Council.

**1.09.03 Officers**

Each January the commission will elect a chair and a vice-chair who will serve until successors are elected.

**1.09.04 Duties**

(A) The commission has the powers and duties assigned to it by this code, ordinances, resolutions, and state law. The commission conducts public hearings, advises Council on land use issues and priorities, and makes quasi-judicial land use decisions and legislative recommendations to the Council.

(B) The commission also performs the following functions:

(1) Provides the budget committee and the Council with recommended policy directions regarding capital improvement programming and management strategies; provides the opportunity for citizen participation in the annual capital improvement planning process; develops a process and set of standards for capital improvement programming.

(2) Recommends to the Council plans and policies for growth management and enhancement of the City including:

(a) Proposed comprehensive plan amendments to implement functional plans, the Regional Framework Plan and various City-initiated land use related growth management proposals.

(b) Matters related to the implementation and periodic update of the Dayton Community Development Plan, including findings, procedures, policies, and standards.

(c) Proposals of citizen advisory committees and task forces related to land use issues, priorities, and decisions, and plan amendments and makes recommendations to the Council on these proposals.

**1.09.05 Meetings**

The commission holds meetings as necessary at the fire hall. A majority of the members of the commission constitutes a quorum.

**1.09.06 Staff Assistance**

The manager assigns staff as necessary to assist City commissions and committees.

**1.10.00 BUDGET COMMITTEE**

**1.10.01 Membership** *(as amended by ORD 580, adopted 03/05/07; effective 04/05/07)*

The budget committee consists of the members of Council and seven persons who are registered voters residing within the City and are appointed by council for staggered three year terms. No appointed member may be an officer, agent or employee of the City.

**1.10.02 Officers**

At its first meeting each year, the budget Committee will elect a chair who must not be a council member and a secretary.

**1.11.00 HISTORIC PRESERVATION COMMITTEE** *(added by ORD 592, adopted 11/02/09)*

The Historic Preservation Committee (HPC) has five members, at least three of which must be city residents, whose appointments will be made considering the following:

- A. Demonstration of a positive interest, competence or knowledge of historic preservation;
- B. Professional qualifications or experience in the fields of history, architecture, architectural history, archaeology, arts, culture, city planning, landscape architecture, business, real estate, law, government, engineering or construction; and
- C. If not city residents, appointees must reside within a five-mile radius of city boundaries.

**1.11.01 Purpose**

The HPC advises the Planning Commission (PC) and Council on matters relating to historic preservation by:

- (A) Completing projects and activities related to obtaining and maintaining city certified local government (CLG) status. The HPC will assist the City in the pursuit and administration of CLG grants and other preservation activities at the request of the city;
- (B) Maintaining the city cultural resources inventory (inventory) by:

- (1) Making recommendations to the PC and Council regarding designating properties as historic or cultural landmarks that meet the criteria for designation under the code;
  - (2) Making recommendations to the PC and Council regarding removal of landmarks from the inventory under the code;
  - (3) Periodically reviewing and making recommendations for updating the inventory;
  - (4) Maintaining criteria for the inventory and evaluation to implement this code chapter; and
  - (5) Conducting public outreach and education relating to proposed alterations of cultural resources.
- (C) Regulating and protecting landmarks through review and recommendations to the PC and Council relating to approval or denial of proposed activities in accordance with the criteria for alteration, relocation or demolition of landmarks under the code;
- (D) Reviewing proposed activities by the city and other government agencies that may seriously affect designated landmarks and advise the PC and council regarding such activities; and
- (E) Performing other activities relating to historic and cultural landmarks preservation including:
- (1) Providing public education on the history, scenic and cultural landmarks of the city;
  - (2) Providing advice to the Council and other city bodies on preservation of historic and cultural landmarks including applicable Code revisions;
  - (3) Providing technical, economic information on the preservation of historic and cultural landmarks;
  - (4) Providing recommendations to the Council and PC on historic and cultural landmark preservation programs, such as tax incentives to preserve designated landmarks;
  - (5) Hearing public comments regarding the cultural, historic and scenic values of community landmarks; and
  - (6) Securing alternative funding and develop local grant or loan programs to encourage the preservation of historic resources in the city.

### **1.11.02 Terms and vacancies**

Each HPC member serves a four-year term or until their successor is appointed and takes office. Appointments and reappointments are staggered with a least one member appointed or reappointed at the beginning of each calendar year. HPC members may be reappointed without term limits. The term of a member appointed to fill a vacancy expires at the end of term of the vacating member.

### **1.11.03 Officers and procedures**

The HPC elects a chair and vice-chair to serve a one-year term of office, or until a successor is elected and takes office. The HPC will adopt rules and procedures for its functioning.

**1.11.04 Meetings**

The HPC will hold regular meetings at least once quarterly at the Dayton City Hall, or as otherwise designated, at a time and place scheduled by the City Manager. The HPC may hold additional meetings as the HPC determines appropriate. A majority of the HPC is necessary for a quorum. The HPC will adopt procedures consistent with state law for conducting fair and orderly public hearings.

**1.12.00 LOCAL CONTRACT REVIEW BOARD**

**1.12.01 Membership**

The Council serves as the local contract review board for the City and may take action authorized by state law for local contract review boards.

**1.12.02 Regulations**

The local contract review board will follow the Oregon Attorney General's Model Public Contract Rules Manual unless the board adopts exceptions or other rules or procedures to guide its deliberations and decisions. The Council will adopt such rules by resolution.

**1.013.00 MANAGER**

**1.13.01 Chief Administrative Officer**

The manager is the chief administrative officer of the City, and must perform the duties set forth in Charter section 34 (d). The manager is responsible to the mayor and Council, but consults directly with the mayor between Council meetings. The manager may propose to the Council revisions to the City personnel rules and regulations for City employees. The manager is responsible for administration and enforcement of those rules.

**1.13.02 Professional Services Contracts**

The manager may propose professional services contracts for council approval, and the manager is responsible for the administration of such contracts. Such contracts include:

- (A) City Attorney,
- (B) City Engineer,
- (C) City Planner,
- (D) City Building Inspector,
- (E) Municipal Court Judge, and
- (F) Law Enforcement Officer

**1.13.03 Code Enforcement Officer**

The manager is charged with the enforcement of all City codes. The manager may issue citations for violations of this code, and initiate violation proceedings to enforce the Charter, ordinances or provisions of this code. No violation proceeding for enforcing the Charter, ordinances or code provisions of the city may be commenced by a private party. All enforcement proceedings for violations of the Charter, ordinances or provisions of the code may be initiated by filing a citation with the Yamhill County Circuit Court.

**1.14.00 CITY ATTORNEY**

**1.14.01 Office of City Attorney**

- (A) The city has an office of the city attorney. The attorney is appointed and may be removed from office by a majority vote of the entire Council.
- (B) The Council will periodically review the performance of the attorney.

**1.14.02 Duties**

The attorney is the chief legal officer of the City and has the following duties:

- (A) Give legal advice and opinions orally and in writing to the Council, mayor, manager, or any other person authorized by the Council or manager to obtain advice and opinions.
- (B) When requested by the manager, review and approve as to form written contracts, bonds, real property instruments, and other legal documents to which the City is a party.
- (C) When requested by the manager, prepare ordinances, resolutions, orders, and other documents of Council decisions.
- (D) When the City is not covered by insurance, represent and defend the City and its commissions, committees, officers, and employees
- (E) Institute legal actions for the City in a court or tribunal as directed by the Council. The attorney may institute appeals on behalf of the City in a case in which another party has first appealed. The attorney may institute other appeals as directed by the Council.

**1.14.03 Attorney-Client Relationship**



The City and attorney have an attorney-client relationship and the city is entitled to all the benefits of such relationship.

## **1.15.00 RECORDS**

### **1.15.01 Records Retention and Destruction**

- (A) City employees are required to keep City records for the periods established by state law.
- (B) No financial records may be destroyed until an independent post-audit has been made covering the period to which the records pertain.

### **1.15.02 Fees for City Documents**

The manager may set fees for:

- (A) Providing, comparing, and certifying copies of documents, reports, or other materials; and
- (B) Providing special services or the use of City property beyond the scope of services or property use generally provided to the public.

## **1.16.00 REAL PROPERTY TRANSACTIONS**

### **1.16.01 Council Approval**

Council approval is required for all real property transactions except as described in DC 1.13.01.

### **1.16.02 Manager Approval**

The manager is authorized to negotiate and approve the following real property transactions:

- (A) Easements and rights-of-way for streets and utilities (City may be the grantor or grantee) if donated or purchased for 120% or less of the real market value determined by the county assessor or the appraised value.
- (B) Plat dedications required by the Community Development Code.
- (C) Purchase and sale agreements that are subject to Council approval (City may be the grantor or grantee) before closing.
- (D) Acquisition of donated property if part of an approved master plan.
- (E) Licenses or permits to use real property (City may be the licensor or licensee).

- (F) Acquisition of small parcels to consolidate ownership or improve access to City property if the value is less than \$15,000.
- (G) Quitclaim deeds releasing utility easements that are not in use and do not benefit the public.
- (H) Acquisition of property in lieu of payment of Park System Development Charges if value is documented by an appraisal.
- (I) Such other real property transactions as Council may delegate to the manager.

**1.16.03 Public Improvement Documents**

The manager is authorized to approve the following documents relating to public improvements:

- (A) Acceptance of public improvement projects constructed to City standards.
- (B) Agreements for property owners to contribute to the construction of public improvements required by the Community Development Code but to be constructed later.
- (C) Financing agreement related to System Development Charges, Local Improvement Districts, and public improvements.

**1.16.04 Execution of Documents**

Documents approved by the Council or manager will be executed by the manager and recorded with Yamhill County if required or permitted.

**1.17.00 REAL PROPERTY LIENS**

**1.17.01 Real Property Liens for Municipal Services; Assessment Objections**

- (A) If the City provides services or benefits to property its owner or occupant, the City has the right to assess the property for all costs associated with those services and make the assessment a lien on the property, including the costs for performing staff work reasonably related to and associated with the determination, imposition and recordation of the lien.
- (B) The assessment will be recorded in the City lien docket, and at the discretion of the manager also recorded in county records. From the date of entry of the assessment, the sum entered is a lien against that property. Such assessment liens have priority over all other liens and encumbrances except as otherwise provided by state law and the interest at the legal interest rate.

- (C) Before any charge or cost may be made an assessment lien under this section, the manager will send written notice of the proposed assessment by First Class mail or personal delivery to the owner of the property as shown in the county tax records. Notice must be sent or given not less than 20 days before recordation in the City lien docket or county records. Failure of an owner to receive actual notice of the proposed assessment will not affect the validity of the underlying charge or the lien.
- (D) If an owner wishes to challenge the validity or amount of the proposed assessment, the owner may do so by filing a written objection with the Council stating the basis for the objection. The objection must be received by the City not more than 15 days after the date of the written notice, unless the council waives this time limit for good cause shown. The Council will hold a hearing to allow the owner to show by a preponderance of evidence that the amount or validity of the assessment is in error. The Council may then adjust the assessment and direct the manager to record the corrected assessment in the City lien docket and county property records. While an objection is pending before Council, no assessment will become a lien.
- (E) If the owner of property fails to timely or properly challenge the validity or amount of an assessment, the manager may record the lien in the City lien docket and county property records without further action by the Council after the periods for lien challenge expire.

**1.17.02 Attorney’s Fees**

If the City brings a legal action in any court for the enforcement of any code provision, ordinance, resolutions, or right under its charter or state law, the City is entitled to the award of its reasonable attorney’s fees if it is the prevailing party.

**1.18.00 MUNICIPAL COURT PROCEDURES FOR CERTAIN CODE ENFORCEMENT MATTERS** *(Added ORD 643, effective 03/06/19)*

**1.18.01 Purpose**

The purpose of this Chapter is to provide for the prompt, effective, and efficient enforcement and adjudication of the Dayton Municipal Code so as to carry out the policies of the City as those policies are embodied elsewhere in this code other than traffic violations or traffic crimes as defined by ORS 801.545 (2017).

**1.18.02 Jurisdiction - Limitation**

- (A) The Municipal Court shall have jurisdiction over all cases submitted in accordance with the procedures and conditions set forth in this

Chapter; however, the Municipal Court Shall not be required to use the procedures and conditions set out herein for:

- 1) Any offense(s) both treated by the City and described as “violations” by the terms of ORS 153.008 (2017);
  - 2) Traffic violations or traffic crimes as defined by ORS801.545 (2017); or
  - 3) Parking offenses.
- (B) Notwithstanding the foregoing, the City reserves to itself the right to exercise the authority granted it pursuant to ORS 30.310 and 30.315 (2017) in situations deemed by the City Council, City Manager and/or City Attorney to be appropriate.

### **1.18.03 Definitions**

- (A) “Municipal Court” means the Dayton Municipal Court (including judge(s) sitting therein) and any other person designated and appointed by the Council or Municipal Judge to act in a judicial capacity in a particular proceeding(s) in the Municipal Court.
- (B) “Party” means:
- 1) The City of Dayton.
  - 2) Any person named by the City as a respondent in the complaint.
  - 3) Any person requesting participation in a hearing as a party or a limited party which the Municipal Court determines has an interest in the result of the proceeding.
- (C) “Respondent” means the party(ies) whom the City alleges in the complaint to have committed a violation of City Code or to be responsible for such violation.

### **1.18.04 Authority of the Municipal Court**

- (A) In addition to any procedures set forth elsewhere in the Code, code enforcement proceedings shall be conducted in accordance with the procedures set forth in this Chapter.
- (B) The Municipal Court may promulgate rules not inconsistent with this Chapter concerning procedure and the conduct of hearings under this Chapter, and the Municipal Court is authorized to adopt rules, procedures and forms to implement the provisions of this Chapter.

### **1.18.05 Initiation of Code Enforcement Proceedings**

- (A) A proceeding before the Municipal Court using the procedures set out in this Chapter may be initiated as specifically authorized elsewhere in the Code or as set forth below.
- (B) A proceeding before the Municipal Court can be initiated by the City filing a citation or a complaint with the Municipal Court on forms approved by the Municipal Court. In the event a complaint is filed, it shall contain:
  - 1) The name(s) of the respondent(s);
  - 2) The address or location at which the violation is alleged to have occurred;
  - 3) A short and plain statement of the alleged violations, including a reference to the particular City Code provision(s), resolution(s), rule(s) or regulation(s) involved;
  - 4) The nature of the relief sought by the City;
  - 5) The City department(s) initiating the proceeding;
  - 6) The name, title, and signature of the person initiating the proceeding on behalf of the City; and
  - 7) Such other information as the Municipal Court may require.

**1.18.06 Setting of Hearing**

- (A) Upon filing of a citation or a complaint, the Municipal Court shall specify a time, date and place for a hearing on the citation or complaint and the matters alleged therein.
- (B) The date set for the hearing shall be not less than 7 or more than 60 days after the date the citation or complaint is first filed, except:
  - 1) That the Municipal court may specify a date for hearing less than 7 days after the complaint is filed where it reasonably appears the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person; or
  - 2) By agreement of the parties.
- (C) The Municipal Court may postpone, continue, set over or reschedule any hearing:
  - 1) With the consent of all parties;
  - 2) On the motion of any party for good cause shown; or

- 3) On the Court's own motion or the Court's convenience in the interest of justice.

**1.18.07 Notice of Hearing**

- (A) The City shall give notice of the hearing (along with the applicable citation or complaint) to the respondent(s) and all other parties not less than five calendar days prior to the date set for hearing except:
  - 1) The Municipal Court may set a shorter period when it reasonably appears the alleged violation poses an immediate and serious hazard to the public health, safety or welfare or the life, health, safety, welfare or property of any person; or
  - 2) By written agreement of all parties.
- (B) The notice of hearing shall specify the time, date and place for the hearing.
- (C) Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by:
  - 1) Personally delivering the notice to the party(ies);
  - 2) Mailing the notice by United States mail, postage prepaid, and addressed to the residence or business address of the party(ies); or
  - 3) Any method authorized by the Oregon Rules of Civil Procedure for the service of a summons.

If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail.
- (D) Notice of the hearing and a copy of the citation or complaint shall also be given to:
  - 1) The tenants, residents and lessees of any building, property, or structure if the City has requested in the complaint the vacation, closure or demolition of the building, property or structure or if the Municipal Court determines such vacation, closure or demolition is a reasonably possible outcome.
  - 2) Any other person who reasonably appears to have an interest in the property involved or who reasonably appears may be adversely affected by any determination, decision, or order of the Municipal Court.
  - 3) Any person who has requested such notification.

- (E) The failure of any person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision or order of the Municipal Court.

**1.18.08 Notice – Rights - Procedure**

- (A) Prior to the commencement of any contested hearing, the Municipal Court shall inform each party to the hearing of the following:
  - 1) A general description of the hearing procedure including:
    - a. The order of presentation of evidence;
    - b. What kinds of evidence are admissible;
    - c. Whether any objections be made to the introduction of evidence and what kind of objections may be made; and
    - d. An explanation of the burdens of proof or burdens going forward with the evidence.
  - 2) That a record will be made of the proceedings and the manner of making the record and its availability to the parties.
  - 3) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the Municipal Court.
  - 4) Whether an attorney will represent the City in the matters to be heard and whether the parties ordinarily and customarily are represented by attorneys.
  - 5) The function of the Municipal Court including the effect and authority of the Municipal Court’s determination.
  - 6) In the event a party is not represented by an attorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party’s rights.
  - 7) Whether there exists an opportunity for an adjournment at the end if the party then determines that additional evidence should be brought to the attention of the Municipal Court and the hearing is reopened.
  - 8) Whether there exists an opportunity after the hearing and prior to the final determination or order of the Municipal

Court to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or order of the Municipal Court.

- 9) A description of the judicial review process from the determination or order of the Municipal Court.
- (B) The information required to be given under subsection A of this Section may be given in writing or orally prior to commencement of the hearing. The failure to give said notice (or of any item specified) shall not invalidate any determination or order of the Municipal Court unless on appeal from the review of the determination or order a reviewing Court finds that the failure affects the substantive rights of the complaining party. In the event of such a finding, the reviewing Court shall remand the matter to the Municipal Court for a reopening of the hearing, directing the Municipal Court as to what steps shall be taken to remedy the prejudice to the rights of the complaining party.

#### **1.18.09 Depositions**

On petition of any party, the Municipal Court may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken via audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the witness's testimony and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the Municipal Court may issue a subpoena to require the witness to appear for deposition.

#### **1.18.10 Subpoenas**

- (A) The Municipal Court shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, shall receive fees and mileage as prescribed by Oregon law for witnesses in civil actions.
- (B) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, a judge of the Circuit Court upon the application of the Municipal Court (or of a designated representative of the Municipal Court or of the party requesting the issuance of the subpoena) shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such Court or a refusal to testify therein.



**1.18.11 Discovery**

- (A) On petition of any party and a showing of the general relevance of the documents or things sought, the Municipal Court may enter an order directing any party to produce and make available to the petition party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party.
- (B) The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.
- (C) The Municipal Court shall not enter any order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law.

**1.18.12 Evidence**

- (A) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the Municipal Court on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Municipal Court shall give effect to the rules of privilege recognized by law.
- (B) Objections to evidence may be received in written form.
- (C) All evidence shall be offered and made a part of the record in the case and except for matters stipulated to and, except as provided in subsection D of this Section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference. The burden of resending evidence to support a fact or position in a contested case rests on the proponent of the fact or position.
- (D) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.
- (E) The Municipal Court may take notice of judicially recognizable facts and the Municipal Court may take official notice of general, technical or scientific facts within the specialized knowledge of city employees. Parties shall be notified at any time during the proceeding (but, in any event, prior to the final decision) of material officially noticed, and they shall be afforded an opportunity to contest the facts so notice.

- (F) No sanction shall be imposed or final order issued except upon consideration of the whole record as supported by, and in accordance with, reliable, probative and substantial evidence.

**1.18.13 Proposed and Final Orders**

The Municipal Court shall prepare and mail to all parties a proposed order including findings of fact and conclusions of law. The proposed order shall become final on the date specified in the order, which date shall not be less than 14 days after such mailing, unless the Municipal Court finds that an existing violation is imminently dangerous to the health, safety or property of any person or of the public, in which case the order may specify an earlier date.

**1.18.14 Orders**

- (A) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.
- (B) Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Municipal Court's order. The findings of fact and conclusions of law may be orally stated on the record by the Municipal Court and those findings and conclusions incorporated in the written order by reference.
- (C) The Municipal Court shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.
- (D) Every final order shall include a reference to the fact that the order may be judicially reviewed pursuant to ORS 34.010 to 34.100.

**1.18.15 Authority of the Municipal Court**

- (A) The Municipal Court may order a party found in violation of the City Code to comply with the provisions of the Code or the applicable rule or regulation within such time as the Municipal Court may by order allow. The order may require such party to do any and all of the following:
  - 1) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved.
  - 2) Abate or remove any nuisance;

- 3) Change the use of the building, structure, or real property involved;
  - 4) Install any equipment necessary to achieve compliance;
  - 5) Pay the City a civil penalty consistent with the City's Fee Schedule or such greater amount as may be authorized by this Code; or
  - 6) Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.
- (B) In the event any party fails to comply with any provision of an order of the Municipal Court (except a provision requiring payment of a civil penalty only), the Municipal Court may authorize the City to undertake such actions as the Municipal Court may determine are reasonably necessary to correct the violation and/or eliminate or mitigate the effects thereof. The City's reasonable costs of such actions may be made a lien against the affected real property.

**1.18.16 Assessments**

- (A) Costs incurred by the City for any actions(s) authorized by the Municipal Court shall be an assessment lien upon the property subject to the order.
- (B) The City shall furnish a statement of such costs on the owner, in person or by United States mail, postage prepaid and addressed to the owner(s) at the owner(s)' residence or place of business, and shall file a copy of such statement with the Municipal Court with proof of service attached.
- 1) If no objection to such statement is filed with the Municipal Court within 15 days from the date of service or mailing, the Municipal Court shall certify such statement and forward the same to the City Manager who shall forthwith enter the same in the City lien docket.
  - 2) If an objection to the statement is received within the 15-day period, the Municipal Court shall schedule and hold a hearing to consider the objections and after the hearing shall certify such statement (or so much of it as determined to be correct and proper) and forward it to the City Manager who shall enter it into the City lien docket.
- (C) The Municipal Court shall certify to the City Manager the amount of any civil penalty imposed under any order of the Municipal Court, and the finance director shall enter it into the City's lien docket. The lien imposed for the civil penalty shall be in addition to any lien imposed for costs actually incurred by the City.

- (D) In addition to the lien imposed under this section, any person found by the Municipal Court to be in violation of the City Code shall be personally liable for costs incurred by the City and for any civil penalty imposed by order of the Municipal Court.

**1.18.17 Judicial Review**

Review of the final order of the Municipal Court by any aggrieved party (including the City) shall be by writ of review as provided in ORS 34.010 through 34.100 and not otherwise.

**1.18.18 Enforcement**

- (A) The City may institute appropriate suit or legal action (in law or equity) in any court of competent jurisdiction to enforce the provisions of any order of the Municipal Court, including, but not limited to, a suit or action to obtain judgment for any civil penalty imposed by an order of the Municipal Court and/or any assessment for costs or penalties.
- (B) Unless authorized by the Municipal Court, it is unlawful for any person to knowingly enter or remain in any building or structure that the Municipal Court has ordered vacated.

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