

**CITY OF SILVERTON  
CITY COUNCIL AND  
PLANNING COMMISSION SPECIAL MEETING**  
Monday, March 18, 2024 – 6:30 p.m.



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**OREGON GARDENS – Natural Resources Education Center 879 W. Main St. and Zoom**

*Americans with Disabilities Act – The City of Silverton intends to comply with the A.D.A. The meeting location is accessible to individuals needing special accommodations such as a sign language interpreter, headphones, or other special accommodations for the hearing impaired. To participate, please contact the City at 503-874-2216 at least 48 hours prior to the meeting.*

A copy of the full packet is available on the City's website at <https://silverton.or.us/meetings>. In accordance with House Bill 2560 and City of Silverton Resolution 22-06, the meeting will be held in a hybrid format: in person, and electronically using the Zoom web conference platform.

Zoom meeting link:

<https://us02web.zoom.us/j/85465636866?pwd=L1lOR2U2VmVCSXQ2WDZPa0dDU3BzQT09>

Webinar ID: 854 6563 6866

Passcode: 378665

Telephone: 253 215 8782

## **AGENDA**

### **I. OPENING CEREMONIES – Call to Order, Pledge of Allegiance and Roll Call**

### **II. PROCLAMATION**

2.1 Silverton High School Girls Basketball Team Day – Tuesday, March 19, 2024

### **III. CITY COUNCIL AND PLANNING COMMISSION DISCUSSION ITEMS**

3.1 Land Use Presentation and Discussion for the Planning Commission and City Council – Ashleigh Dougill, Beery Elsner & Hammond, LLP

3.2 Comprehensive Plan Overview and Legislative Update – Melissa Ahrens, Oregon Department of Land Conservation and Development (DLCD) Mid-Willamette Valley Regional Representative

3.3 Adopted City Council FY 2024-25 Goals – City Manager Cory Misley

3.4 Update on Proposed Silverton Tree Code Amendments – Community Development Director Jason Gottgetreu

### **IV. CITY COUNCIL DISCUSSION/ACTION ITEMS**

4.1 Authorizing the City Manager to Sign the Professional Service Agreement with NV5 Subject to Legal Revision for Engineering Design and Construction Administration of the Pettit Trail and Pickleball Courts in the Amount Not to Exceed \$397,347 – Community Development Director Jason Gottgetreu

- 4.2 Resolution No. 24-04 – Authorizing the City of Silverton to Apply for a Local Government Grant from the Oregon Parks and Recreation Department – Community Development Director Jason Gottgetreu
- 4.3 Ordinance No. 24-04 – An Ordinance of the Silverton City Council Amending Silverton Municipal Code Chapters 13.02 and 13.52 to Comply with State and Federal Requirements – Beery Elsner and Hammond LLP Associate Attorney Ashleigh Dougill
- 4.4 Lease Extension to June 30, 2024 for the Community Center (National Guard Armory) with the Oregon Military Department and Authorize the City Manager to Extend Sub-Leases with SACA and Jazzercise until June 30, 2024 – City Manager Cory Misley

## **V. CONSENT**

- 5.1 Resolution No. 24-05 – A Transfer Resolution to Increase Appropriations for the Second Street Project – Deputy City Manager/Finance Director Kathleen Zaragoza

## **VI. COUNCIL COMMUNICATIONS**

## **VII. EXECUTIVE SESSION**

The Silverton City Council will meet in Executive Session under the provisions of:

- **ORS 192.660(2)(i)**- “To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.”

Representatives of the news media and designated staff shall be allowed to participate in the Executive Session. All other members of the audience are asked to leave the meeting. News media representatives are specifically directed not to report on or disclose any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. In addition, news media representatives are specifically directed not to audio or video record any portion of the Executive Session. Silverton City Council does not intend to come out of executive session to take final action following its conclusion.

## **VIII. ADJOURNMENT**



## CITY OF SILVERTON PROCLAMATION

### Silverton High School Girls Basketball Team Day

**WHEREAS**, The Silverton high school girls basketball team won the OSAA/On Point Community Credit Union 2024 5A State Basketball Championship. The team completed the season with an overall record of 24-4; and

**WHEREAS**, Under the leadership and guidance of head coach Alyssa Ogle, assistant coaches Hank Ulven, Katie Stanley, Paul Pickerall, Linda Reidman, Brittney Mack, and Ron Church. The team competed in the finals at Linfield University on March 9th, 2024, and came away with an overtime, hard fought victory, over Crater High School; and

**WHEREAS**, This is the 4th state championship title for the Lady Foxes Basketball team. The Lady Foxes won state titles in 1989, 1994, and 2016; and

**WHEREAS**, The City of Silverton Mayor and City Councilors recognizes the Silverton High School Girls Basketball team members including Grace Hayashida, Brooklyn Pfeiffer, Olivia Boyd, Marley Wertz, Lauren Ortega, Susanna Efimov, Kyleigh Brown, Justina Semerikov, Allie Mansur, Maggie Davisson, and Melia Horner. The team has demonstrated hard work, dedication, perseverance, and love of the sport of basketball; and

**WHEREAS**, It is appropriate to recognize the team and allow all local citizens to express their congratulations and convey their appreciation for this achievement.

**NOW THEREFORE**, that the Mayor of Silverton and Council Members does hereby proclaim Tuesday, March 19th, 2024, to be:

#### “SILVERTON HIGH SCHOOL GIRLS BASKETBALL TEAM DAY”

In the City of Silverton, Oregon, and urges all citizens to congratulate the team on this monumental accomplishment.

**IN WITNESS WHEREOF**, I hereunto set my hand and cause the seal of the City of Silverton to be affixed this 18<sup>th</sup> day of March 2024.

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Mayor Jason Freiling

# **Legal Issues for the Planning Commission and City Council**

Presented to the City Council and Planning  
Commission for the City of Silverton

March 18, 2024

by Ashleigh Dougill

BEERY ELSNER & HAMMOND, LLP

# Agenda

- **Brief Refresher on Land Use Basics**
  - History and Purpose of Oregon Land Use Law
  - Role of State and Cities
  - Types of Land Use Decisions
- **Important Issues**
  - Bias, Ex Parte Contacts, and Conflicts of Interest
  - Other Government Ethics Issues
  - Public Meetings Issues
  - Hearing Requirements and Issues
  - Criteria and Findings
  - Appeals
  - 120-Day and Fixed Goalpost Rules
  - Clear and Objective Requirements
  - Constitutional Issues
- **Lessons from Recent LUBA and Court Decisions**

# History and Purpose of Oregon Land Use

- 50<sup>th</sup> anniversary last year
  - Originated with Senate Bill 100, adopted in 1973
  - Concerned at that time primarily with protecting farm and forest lands, preventing sprawl
- Purpose is to manage land uses to achieve a variety of competing and complimentary goals
  - Livability
  - Economic development
  - Protecting resources
  - Efficient and orderly uses of land

# Role of State and Cities

- State:
  - 19 Statewide Planning Goals
  - State statutes and administrative rules
  - DLCD, governed by LCDC
  - LUBA
- Cities:
  - Comprehensive Plans – maps, policy, vision
  - Ordinances - implementing comp plan
  - Review development applications for compliance

# Types of Land Use Decisions

There are two types of land use decisions:

- Legislative
- Quasi-Judicial



# Legislative Decisions

- Legislative decisions typically involve the adoption of more generally applicable policies, standards, etc., that apply to a variety of factual situations, and a broad class of people.
- Examples include amending the comprehensive plan, a zone change that applies broadly to large areas, or changes to the text of the development code to include or delete specific uses in a zoning classification.
- Because a legislative decision is the expression of City policy, the City is not required to reach a decision on a legislative proposal and may table the issue or decline to review it altogether.
- Bias and ex parte requirements do not apply.

## Quasi-Judicial Decisions

### Definition:

- The application involves only a single property or small group of properties.
- A decision on the application is based on pre-existing criteria.
- The city is required to make a decision.

Most of your decisions will be quasi-judicial. The focus is on “judicial” – you will be effectively acting as the judge to determine an application’s compliance with applicable requirements. Because of that, additional requirements apply.

## Bias

Bias exists if the decision was the product of positive or negative bias rather than an independent review of the facts and law.

*Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

The standard is whether the decision-maker prejudged the application and did not reach a decision based on the evidence in the record and the applicable criteria. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBUA 702 (2001).

## Bias – Example

*Halvorson Mason Corp v. City of Depot Bay*, 39 Or LUBA 702 (2001).

- Facts: Prior to decision, city councilor sent letter to mayor and other councilors concluding that applicant did not have the right to use the structure for the proposed use.
- LUBA: The city councilor formed an opinion regarding the legality of the real estate sales office prior to receiving evidence during the course of the city council proceedings. . . It is clear [the councilor] prejudged the application and was incapable of rendering an impartial decision based on the application, evidence and argument submitted during the city's proceedings on the application.

## Bias - Example

### Woodard v. Cottage Grove, 54 Or LUBA 176 (2007)

- Facts: City councilor signed letter to the editor encouraging project opponent to leave town. Also requested police logs regarding projects opponents and included them in the record.
- LUBA: “The role of the local government decision maker is not to develop evidence to be considered in deciding a quasi-judicial application, but to impartially consider the evidence that the participants and city planning staff submit . . . in the course of the public proceedings.

## Bias - Example

*Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

- Facts: City councilor was member of church that applied for conditional use permit. Voted to approve permit.
- LUBA: Where the decision maker has expressed concern about the proposed conditions of approval but nevertheless declares that she is able to render a decision based on the facts and law before her, that decision maker has not impermissibly prejudged the application.

## Bias - Example

*Nicita v. Oregon City*, 74 Or LUBA 176 (2016).

- Facts: Petitioner challenged city decision to approve plan amendment, zone change and master plan.
- LUBA: A city councilor's reference to "banana" as an acronym for "build absolutely nothing anywhere near anything" does not demonstrate that the city commissioner was biased against opponents.

## Ex Parte Contacts

Definition: Communication or information received outside of the record on a matter that is pending before the city. Can include site visits.

ORS 227.180(3): A decision is not invalid if the decision-maker receiving the contact discloses the **substance** of the communication on the record and allows an opportunity for parties to respond. Tip: Err on the side of over-disclosure.

### Exceptions:

- Communication with staff.
- Communication before application is submitted or after final decision (more on this later).



# Conflicts of Interest

- Actual vs. Potential:
  - Actual: The decision will result in a “private pecuniary benefit or detriment.”
  - Potential: The decision may result in a “private pecuniary benefit or detriment.”
- Includes relatives, household, businesses.
- Must disclose both. For actual, must recuse oneself. Recommendation: Leave the room.
- Can overlap with bias.
- In addition to appeal issues, can result in personal liability for the official (fines, plus up to 2x financial gain).
- Call OGEC

# Other Government Ethics Issues

- Use of Position or Office (ORS 244.040(1))
  - Prohibits every public official from using or attempting to use their position to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.
  - Examples: Using public resources to conduct private business
  - Sometimes overlaps with conflict of interest
- Gifts (ORS 244.025)
  - A “gift” is anything of economic value (including discounts or forgiveness of debt) not offered to the general public
  - Does giver have a legislative or administrative interest in the decisions or votes of the public official?
    - Refers to an economic interest distinct from the general public in the decision or vote of a public official
  - If so, maximum \$50 total per calendar year.
- Includes relatives, household, businesses.
- Can result in personal liability for the official (fines, plus up to 2x financial gain).
- Call OGE

# Public Meetings Issues

- The Planning Commission and City Council are both subject to Oregon Public Meetings Law (ORS 192.620 et seq.).
- All meetings must be publicly noticed and open to the public.
- Applies to meetings where decisions or deliberations on matters of official business occur.
- Includes electronic communication.
- Also includes so-called “serial meetings,” where a quorum isn’t directly involved at the same time (HB 2805 (2023)):
  - Non-contemporaneous electronic communications (e.g. e-mail, social media)
  - Through an intermediary

# Hearing Requirements

## Quasi-Judicial Hearings:

- Notice requirements
- Staff typically provides a script to open the hearing which meets other requirements (“raise-it-or-waive-it,” identifying criteria).
- At the “initial evidentiary hearing,” anyone can ask for time to present additional argument or evidence. Record must be held open or continuance granted.
- Applicant gets seven days after record closes to submit final written argument. Applicant can waive seven-day period.

# Hearing Issues

- Presiding Officer has inherent authority to maintain order and decorum
  - Reasonable rules for conduct of meeting
  - Order and length of public testimony (may be specified by ordinance or other rules)
- Disturbances
  - Provide a warning
  - If behavior continues, ask to leave the meeting
  - If they do not leave, they can be treated as a trespasser
  - Tip: Call a recess

## Criteria and Findings

- Criteria: Approval or denial must be based on standards and criteria adopted by ordinance.
- Findings: Decision must be accompanied by a statement explaining the relevant criteria, facts relied upon, and justification for the decision based on the criteria.
  - Decision must be based on substantial evidence in the record
  - Resolve conflicts in the evidence
  - Tip: Limit all discussion to criteria and evidence

# Appeals

- Local Appeals
  - Applications are generally divided into categories in the code (Type I, Type II, etc.) which will define the initial decision maker and the appeal body
  - Appeals can be “de novo” (a completely new hearing process) or “on the record” (no new evidence; decision based on record from initial decision maker)
- Further appeals
  - LUBA
  - Oregon Court of Appeals, etc.
- Remand
  - Be mindful that appeals may results in remand, so you may be making a new decision on the same application again in the future. Consider implications for bias and ex parte contacts with conduct after making a decision.

## 120-Day Rule

- Final decision (including all local appeals) must be made within 120 days after the application is deemed complete.
- Failure to meet this deadline:
  - Requires the City to refund at least 50% of fees/deposits (or unexpended portion)
  - Allows the applicant to file a write of mandamus in Circuit Court, where the application will be approved unless City can show approval would violate code.
- Can be extended **in writing** up to 245 days (or 335 days if the parties are undertaking mediation).
  - Tip: Have blank extension forms at hearings.



## Fixed Goalpost Rule

- Decision must be based on the standards and criteria applicable at the time the application was first submitted.

## Clear and Objective Requirements

- All “standards, conditions and procedures regulating the development of housing” must be clear and objective.
- If they aren’t clear and objective, they cannot be applied.
- An alternative, discretionary path can be provided as long as a clear and objective path is available.
- Simple in concept; very challenging to accomplish in reality.

# Constitutional Issues

- A “taking” is a governmental appropriation of private property. Under the state and federal constitutions, the government must provide “just compensation.”
- Can be the result of regulations that limit the use of property.
- More commonly, can be the result of exactions, meaning conditions of approval that require transfer of private property (e.g. road dedications, construction of improvements). These must meet two requirements:
  - Nexus: The relationship between the exaction and the underlying regulation of the property.
  - Rough proportionality: The exaction is related in nature and extent to the impact of the proposed development.

## Lessons from Recent LUBA and Court Decisions

- Clear trend toward strictly construing “clear and objective” (in residential contexts)—almost a mathematical standard.
- Ambiguous code language (in non-residential contexts)—cities should ensure (1) it is clear how the code will be applied/interpreted and (2) that the parties have an opportunity to respond and provide evidence while the record is open.

# Questions?

- Additional resources:
  - [Oregonlandusetraining.info](http://Oregonlandusetraining.info)
  - An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon (a bit dated, but still valuable)
  - OGEC Guide for Public Officials (for conflicts of interest and other ethics issues)

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**DLCD**



# Comprehensive Planning/Goal 2 Overview

March 18, 2024

Melissa Ahrens, Oregon Department of  
Land Conservation and Development  
(DLCD)

# WHAT IS DLCD?

## → Source of support for City Governments

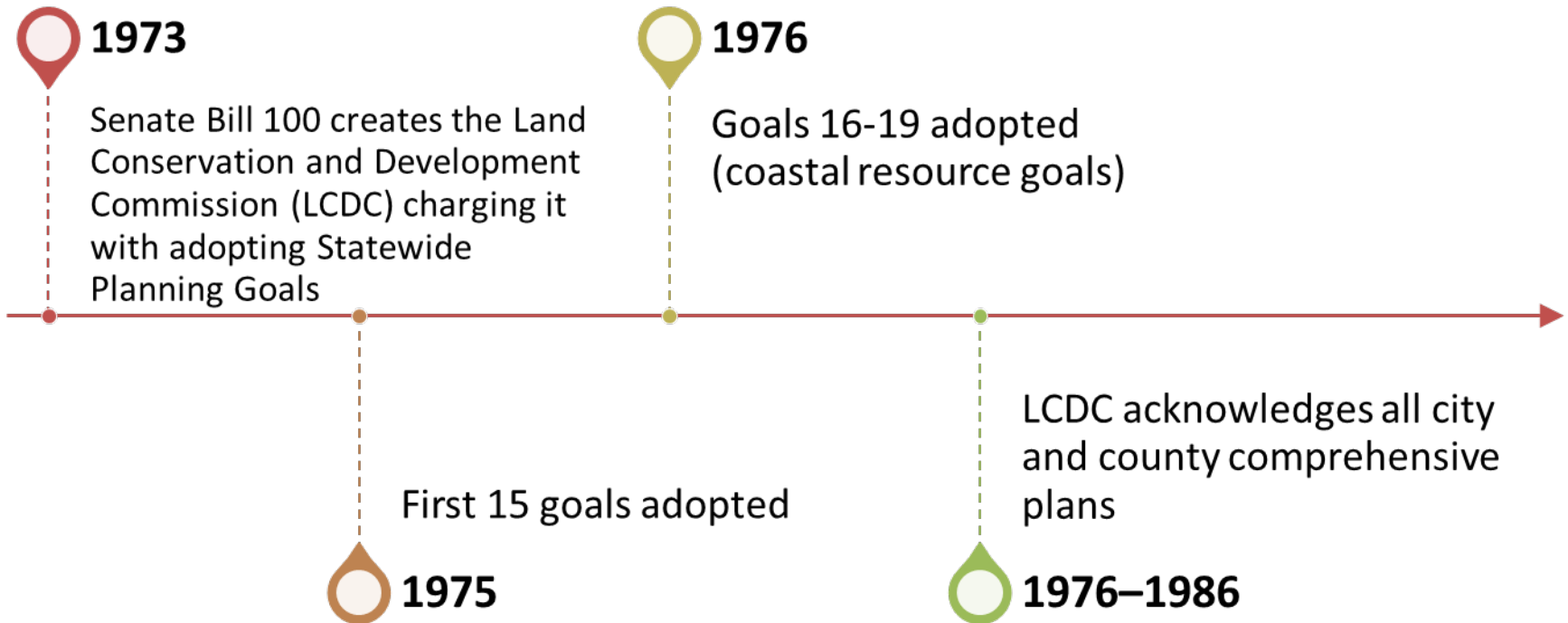
(land use planning information, grant opportunities, advocate for local needs, and resource for Local Government partners)

## → Staff to LCDC

## → Directed by the Legislature to:

- set standards for managing urban growth;
- protect farm and forest lands, coastal areas, natural resource lands; and
- work with local governments to provide for safe, prosperous, livable communities consistent with community values and standards.

# LAND USE PLANNING IN OREGON





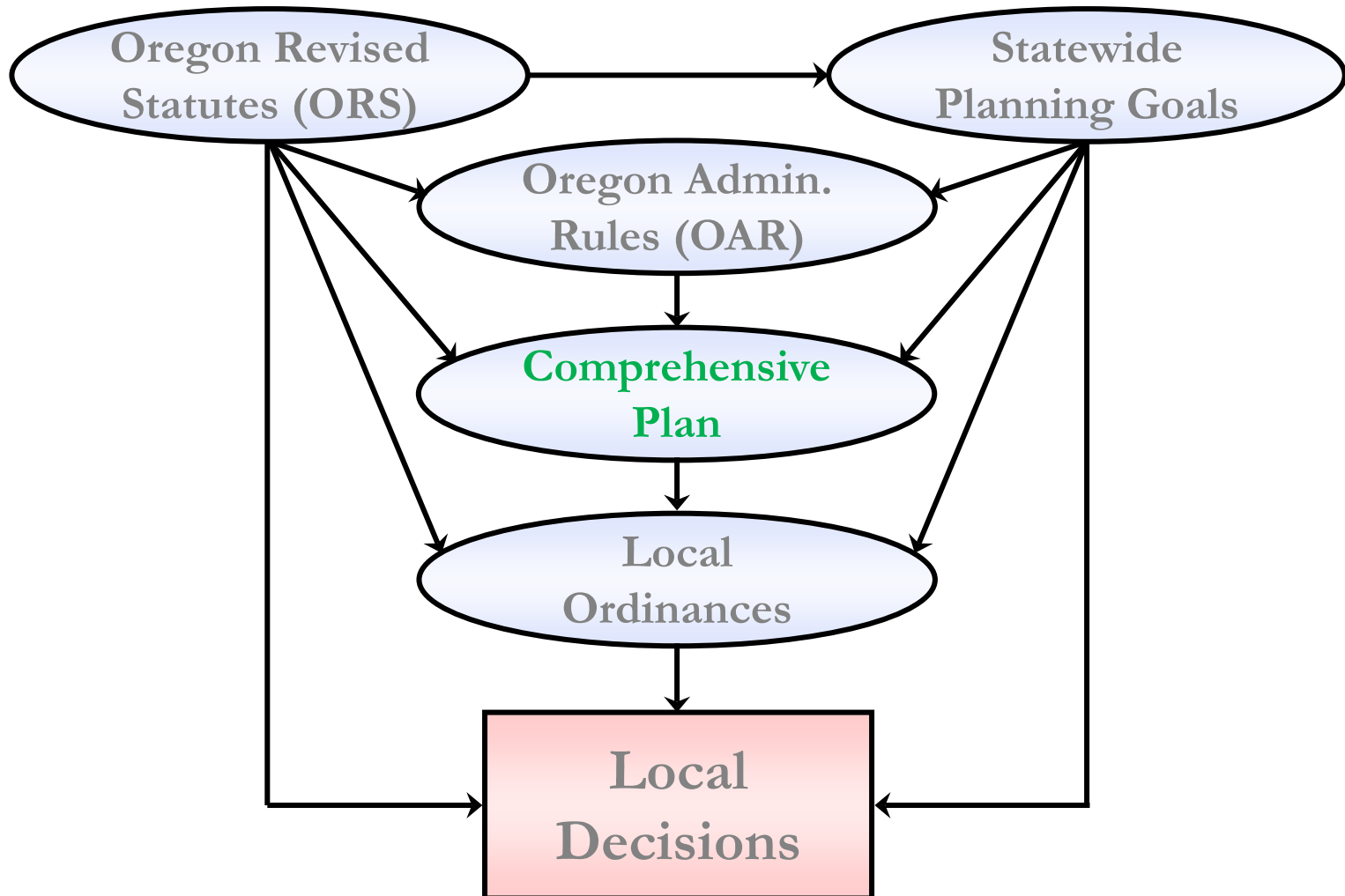
# STATEWIDE PLANNING GOALS

- **Goal 1 – Citizen Involvement**
- **Goal 2 – Land Use Planning**

- Goal 3 – Agricultural Lands
- Goal 4 – Forest Lands
- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 – Air, Water, and Land Resources Quality
- Goal 7 - Areas Subject to Natural Hazards
- Goal 8 - Recreation Needs
- Goal 13 – Energy Conservation
- Goal 15 - Willamette River Greenway

- Goal 9 – Economic Development
- Goal 10 - Housing
- Goal 11 - Public Facilities and Services
- Goal 12 - Transportation
- Goal 14 – Urbanization
- Goal 15 – Willamette River Greenway
- Goal 16 – Estuarine Resources
- Goal 17 – Coastal Shorelands
- Goal 18 – Beaches and Dunes
- Goal 19 – Ocean Resources

# LINK TO LOCAL CITY PLANNING



# GOAL I CITIZEN INVOLVEMENT

**Cities and Counties are to develop  
a citizen involvement program  
that insures the opportunity for citizens  
to be involved in all phases  
of the planning process.**

## GOAL 2

### WHAT DOES IT DO?

- Requires local governments to have **comprehensive land use plans** and implementing ordinances that:
  - ❖ comply with the applicable Statewide Planning Goals,
  - ❖ require decision-making based upon an adequate factual base
  - ❖ require coordination with other affected governments.

# WHAT IS A COMPREHENSIVE PLAN?

- Grounded in Community Input and Engagement
- Regulatory Framework for Community Vision and Growth Needs
- Required to:
  - Have an adequate factual base.
  - Comply with the requirements of each applicable Statewide Planning Goal
  - Include policies and implementation measures
  - Be consistent with County plans
  - Coordinate with special district and state agency plans



# COMP. PLAN UPDATE PROCESS OPTIONS

Post-  
acknowledgment  
plan amendment  
(PAPA)

OAR 660-018

**PUBLIC  
INPUT**

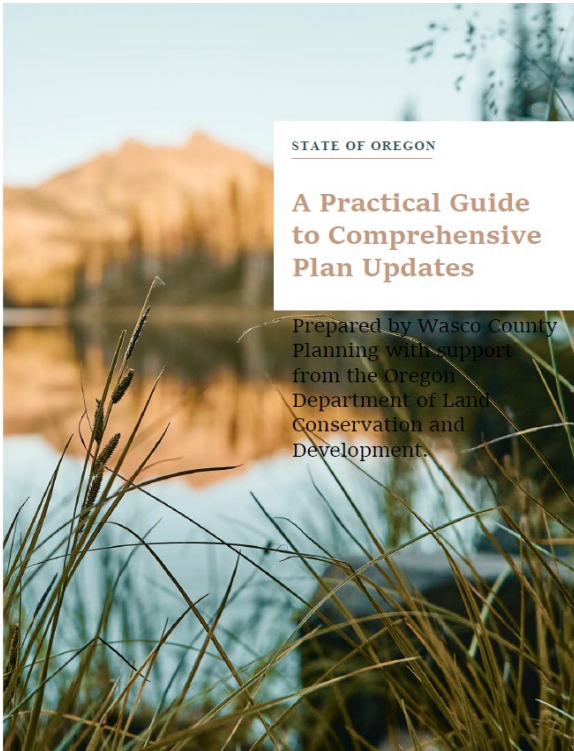
**FORMAL  
NOTICING**

**ADOPTION  
BY  
ORDINANCE**

Voluntary  
Periodic Review  
(PR)

OAR 660-025

# OVERVIEW OF UPDATE PROCESS



## STEPS:

- **Data/Analysis**
- **Policy/Plan Evaluation**
- **Draft update of background factual documents and policies**
- **Noticing and Legislative Process for adoption (PR or PAPA)**

**Public Input,  
Equitable  
Engagement**

# RESOURCES

- *American Planning Association Scoring Matrix*
- *The Complete Planner's Guide to Periodic Review*
- *DLCD website for PAPA information*
- *Wasco County Comprehensive Plan Update Guide*



# Housing Land Use Adjustments

In SB 1537 (2024)

Celestina Teva  
DLCD Housing Planner

## Senate Bill 1537 (2024)

### Sections 37 - 43

- Section 37: amending ORS chapter 197A
- **Section 38: Mandatory adjustment to housing development standards**
- Section 39: Mandatory adjustments exemption process
- Section 40: Temporary exemption authority
- Section 41: Reporting
- Section 42: Operative date
- Section 43: Sunset

# For what types of applications?

- **Application eligibility – technical (ALL must apply)**
  - The application is for a building permit or a quasi-judicial, limited or ministerial land use decision
  - The development is on lands zoned to allow for residential uses, including mixed-use residential
  - The residential development is for densities not less than six units per residential acre (for Silverton’s city size)
  - The development is within an urban growth boundary, not including lands that have not been annexed by a city
  - The development is of net new housing units in new construction projects
  - The application requests not more than 10 distinct adjustments to development standards as provided in this section. A “distinct adjustment” means:
    - (A) An adjustment to one of the development standards listed where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment

# For what types of applications?

- **Application eligibility – housing** (application states *how at least one* of these applies)
  - The adjustments will:
    - enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations,
    - enable development of housing that reduces the sale or rental prices per residential unit,
    - increase the number of housing units within the application, or
    - enable the provision of accessibility or visitability features in housing units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations
  - All of the units are subject to an affordable housing covenant for moderate income households for a minimum of 30 years
  - At least 20% of the units are subject to an affordable housing covenant for low income households for a minimum of 60 years
  - All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land trusts making them affordable to moderate income households for a period of 90 years

# Which standards?

Standard	By how much
Side or rear setbacks	Adjustment of not more than 10%
For an individual development project, the common area, open space or area that must be landscaped on the same lot or parcel as the proposed housing	Reduction of not more than 25%
■ Parking minimums	-
Minimum lot sizes	Not more than a 10% adjustment, and including not more than a 10% adjustment to lot widths or depths
Maximum lot sizes, and only if the adjustment results in: 1) More dwelling units than would be allowed without the adjustment, and 2) No reduction in density below the minimum applicable density	Not more than a 10% adjustment, including not more than a 10% adjustment to lot width or depths
Building lot coverage requirements	Up to a 10 percent adjustment

# Which standards?

- **Development standards for manufactured dwelling parks, middle housing, multifamily housing, and mixed-use residential housing applications only:**
  - **Requirements for bicycle parking that establish:**
    - The minimum number of spaces for use by the residents of the project, provided the application includes at least ½ space per residential unit; or
    - The location of the spaces, provided that lockable, covered bicycle parking spaces are within or adjacent to the residential development;
  - **For uses other than cottage clusters, building height maximums that:**
    - Are in addition to existing applicable height bonuses, if any; and
    - Are not more than an increase of the greater of:
      - One story –OR- a 20% increase to base zone height
  - **Unit density maximums, not more than an amount necessary to account for other adjustments under this section**
  - **Prohibitions, for the ground floor of a mixed-use building, against:**
    - Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and
    - Nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.

# Which standards?

- **Design standards:**
  - **For applications for all housing types:**
    - Facade materials, color or pattern.
    - Facade articulation.
    - Roof forms and materials.
    - Entry and garage door materials.
    - Garage door orientation, unless the building is adjacent to or across from a school or public park.
    - Window materials, except for bird-safe glazing requirements.
    - Total window area, for up to a 30 percent adjustment, provided the application includes at least 12 percent of the total facade as window area.
  - **For applications for housing types *other than* single-unit detached:**
    - Building orientation requirements, not including transit street orientation requirements.
    - Building height transition requirements, not more than a 50 percent adjustment from the base zone.
    - Requirements for balconies and porches
    - Requirements for recesses and offsets

# Through what adjustment request review process?

- The adjustments to design and development standards made under these regulations are **limited land use decisions**.
- Only the applicant may appeal the decision.
- No notice of the decision is required if the application is denied, other than notice to the applicant.
- In implementing this subsection, a local government may:
  - (a) Use an existing process, or develop and apply a new process, that complies with the requirements of this subsection; or
  - (b) Directly apply the process set forth in this subsection.
- **NOTE:** Section 45 of SB 1537 requires that all limited land use decisions abide exclusively by the limited land use decision process outlined in ORS 197.195

# Are any cities exempt?

- Local governments **may apply** to the Housing Accountability & Production Office (HAPO) for an exemption
- **Qualifications:**
  - The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;
  - All listed development and design adjustments are eligible for an adjustment under the local government's process; and
  - Within the previous 5 years the city has approved 90 percent of received adjustment requests -OR-
  - The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.



# What is the city exemption application process like?

45-day

- Public Comment Period

Within 120 days

- Determinations on exemption application

While application is pending and if approved

- Applicant notice required

- Exemption approvals may be accompanied by conditions for demonstrated compliance
- Upon complaint and subsequent investigation, exemptions may be revoked

# When does this all apply?

January 1, 2025



January 2, 2032

## What will review of this regulation look like?

- Data collection will be **part of the existing annual permitted & produced survey**
- Biannually, **DLCD will report to the legislature** on this implementation data and the legislature will invite LOC to provide feedback on the report

# Questions & Discussion



**DLCD**

Department of  
Land Conservation  
& Development

Melissa Ahrens, Mid-Willamette Valley Regional Representative

[melissa.ahrens@dlcd.oregon.gov](mailto:melissa.ahrens@dlcd.oregon.gov)

Celestina Teva, Housing Planner

[celestina.teva@dlcd.oregon.gov](mailto:celestina.teva@dlcd.oregon.gov)

**Thank you!**



## City Council Goals for FY 2024-2025

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### CRITICAL INFRASTRUCTURE

- Complete the engineering and design for the Water Storage Tank Reservoir to be located on the two-acre site off Edison Road NE with anticipated construction in FY 2025-26.
- Develop a funding strategy for the new Water Treatment Plant based on the engineering and design from 2022 with an emphasis on reducing the financial burden on rate payers and anticipated construction in FY 2026-27.
- Enhance the Partnership with ODOT, County, and City that collectively supports the entire Silverton Transportation System and work to be as best positioned for statewide opportunities such as the Safe Routes to Schools, STIF, and STIP Programs.
- Conduct a Traffic and Pedestrian Safety Audit to evaluate certain intersections, street cross-sections, and lighting to help prioritize safety improvements and investments.

### COMMUNITY LIVABILITY

- Develop a design for the Downtown Plaza Park south of the Civic Center with a focus as an urban park, community gathering space, and other desired amenities.
- Explore a Mobility Hub concept on the City's A Street Property north of the Civic Center to include additional parking and integration of different modes of transportation.
- Finalize the design, funding strategy, milestones, and timeline with the yet to be selected project partner on the City-owned property for the Westfield Homes Development.
- Continue to advance the Petit Trail and Pickleball Courts (among other park improvements) while maximizing limited dedicated capital park funding and pursuing state grant opportunities and developing partner fundraising and in-kind commitments.

### COMMUNITY RESILIENCY AND ENVIRONMENTAL SUSTAINABILITY

- Create the City's first Urban Forest Management Plan for a shared vision for the future of the Silverton tree canopy including wildfire mitigation and fuels treatment.
- Partner with the Pudding River Watershed Council to enhance the Abiqua and Silver Creek Watersheds through educating and involving the community on their historical, ecological, and strategic roles for the City of Silverton water quality and supply.

### DESTINATION DEVELOPMENT AND ECONOMIC DEVELOPMENT

- Continue to work closely with the Silverton Chamber emphasizing destination development to further Silverton as a preferred year-round choice for visitors.
- Expand the partnership with SEDCOR, Chamber, and others beginning with a Business Retention & Expansion Survey to inform a future Economic Development Strategic Plan.



## City Council Goals for FY 2024-2025

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### SILVERTON 2050


- Initiate a full update to the City's Comprehensive Plan to prepare for and manage expected growth and guide investments in land use and public facilities.
- Complete the awarded Aquifer Storage and Recovery (ASR) Feasibility Grant with Oregon Water Resources Department to better understand its long-term potential and costs.
- Continue to work closely and strategize with other local taxing districts (Fire District and Library District) to better serve the community today while planning for the next generation of Silvertonians.

### GOOD GOVERNANCE

- Strategize with the Oregon Garden on current management practices and how to further utilize it as a community asset, amenity, and attraction for visitors.
- Continue to settle into the new City Hall and develop the protocols and policies for how the spaces can also serve the community in other ways.
- Formulate updated policies and practices regarding City-owned buildings used by community partners with an eye towards sustainable facility management and evaluating strategic disposition of certain properties including the old City Hall.
- Collaboratively evaluate the existing partnership and agreements in place with the Silver Falls School District while brainstorming and aligning on future improvements to the transportation system, community parks and recreation, and school/public safety.

### URBAN RENEWAL AGENCY GOALS

- Develop concepts for the Main Street Downtown Improvement Project to inform all components of the overall vision and guide the final engineering and design.
- Complete an Urban Renewal Agency Plan Update with an emphasis on leveraging all remaining URA funds to align with certain key City projects to be completed in the next five years or sooner.

	<b>Agenda Item No.:</b>	<b>Topic:</b>
	4.1	Authorize the City Manager to Sign the Professional Service Agreement with NV5 Subject to Legal Revision for Engineering Design and Construction Administration of the Pettit Trail and Pickleball Courts in the Amount Not to Exceed \$397,347
	<b>Agenda Type:</b>	
	Discussion/Action	
<b>Meeting Date:</b>		
	March 18, 2024	
<b>Prepared by:</b>	<b>Reviewed by:</b>	<b>Approved by:</b>
Jason Gottgetreu	Travis Sperle	Cory Misley

Recommendation:

Authorize the City Manager to sign the Professional Services Agreement with NV5 for engineering design and construction administration of the Pettit Trail and Pickleball Courts in the amount Not to Exceed \$397,347.

Background:

The City included the Pettit Trail and Pickleball projects in the 2023-2024 fiscal year budget. The City advertised for proposals from engineering firms interested in completing the engineering design work and construction administration for this project from January 8 to January 30 and received proposals from NV5, KPFF, ZCS, and Mackenzie. A review team of four staff members reviewed the proposals and NV5 was selected as the top consultant. NV5 submitted their proposed scope of work and cost on February 16, 2024. Staff met with NV5 on Monday February 26, 2024 to review and see what reductions would be feasible for the scope and cost. A revised scope was received on February 29, 2024 that reduce the original cost by 10.3% and is attachment 2.

The scope includes Pre-Design, 60% Engineering, 2 Public Meetings, Final Engineering, Permitting/Bidding, and Construction Administration.

The proposed agreement is for a not to exceed amount of \$397,347. This is above the budget estimate. Project schedule is estimated to complete design by October 2024 to allow for bidding and construction in to start late 2024.

Budget Impact	Fiscal Year	Funding Sources
\$397,347	2023-2024	Parks and Recreation SDC

Attachments:

1. Proposed Professional Services Agreement
2. NV5 Pettit Trail and Pickleball Design Scope and Fees

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the date first indicated on the signature page, by and between the City of Silverton, Oregon, (hereinafter referred to as the "City"), and \_\_\_\_\_, (hereinafter referred to as "Provider").

WHEREAS, City requires services which Provider is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Provider represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

### 1. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless terminated earlier in accordance herewith.

### 2. Provider's Services

The scope of Provider's services and time of performance under this Agreement are set forth in Exhibit

All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as is fully set forth herein. Any conflict between this Agreement and Provider's proposal (if any) shall be resolved first in favor of this written Agreement. Provider will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Agreement and Exhibit A.

### 3. City's Responsibilities

The scope of City's responsibilities, including those of its Project Manager, are not defined.

### 4. Compensation and Payment

4.1. Compensation. City agrees to pay Provider at the times and in the amount(s) set out and in accordance with Exhibit B. City and selected proposer will negotiate costs, and level of effort, based on the scope of services of a project assignment yet to be determined.

The total award amount authorized per the contract is not to exceed \$ \_\_\_\_\_.

4.2. Overtime. Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC §201 to 209, shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week.

4.3. Withholdings from Compensation. Should Provider elect to utilize employees on any aspect of this Agreement, Provider shall be fully responsible for payment of all withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.



4.4. Medical Care for Employees. Provider shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Provider's employee(s), all sums which Provider agrees to pay for such services and all monies and sums which Provider collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service (ORS 279B.230).

4.5. Contributions to the Industrial Accident Fund. Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors (ORS 279B.220).

4.6. Payment Within Thirty (30) Days. Except for amounts withheld by City pursuant to this Agreement, Provider will be paid for services for which an itemized bill is received by City within thirty (30) days. City is not responsible for compensating Provider for costs or work performed in excess of scope of services as described in Exhibit A unless City has agreed in writing to a change in the scope of services as provided in Section 5 below.

4.7. Fees. City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered in the Request for Proposals and Exhibit A.

4.8. Payment of Claims by the City. If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this Agreement as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this Agreement. The City's payment of a claim under this section shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.

## **5. Change in Scope of Services**

If at any time during the term of this Agreement Provider anticipates a change in the scope and/or timing of services as provided in Exhibit A, Provider shall immediately notify City in writing of the anticipated changes in scope, reasons for the change in scope, and additional costs associated with the change(s) in scope. The City's Project Manager or designee must authorize in writing any changes in the scope of services provided under this Agreement prior to the commencement of such changes in scope of services. The City is not responsible for additional costs associated with a change in scope of services, whether foreseen or unforeseen, unless written authorization is obtained from the City.

## **6. Document Authorization**

All written documents, drawings, and plans submitted by Provider and intended to be relied on for the project shall bear the signature, stamp or initials of Provider or Provider's authorized Project Manager. Any documents submitted by Provider which do not bear Provider's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Provider or Provider's Project Manager need not be put in writing unless requested by the City and may be relied upon by the City.

## **7. Project Managers**

City's Project Manager is Jason Gottgetreu, Community Development Director and Provider's Project Manager is \_\_\_\_\_. Each party shall give the other prompt written notification of any change in their respective Project Manager.

## **8. Project Information**

City shall provide full information regarding its requirements for the project. Provider agrees to share all project information and to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the project. No information, news or press releases related to the project, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

## **9. Duty to Inform**

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Provider has been retained, Provider becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformity with the Agreement or with any federal, state or local law, rule, or regulation, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Provider shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of City to provide a written response to Provider shall neither constitute agreement with nor acquiescence to Provider's statement or claim, nor constitute a waiver of any of City's rights.

## **10. Provider is Independent Contractor**

Provider shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation expressly provided for in this Agreement. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect Provider's independent ability (or the ability of Provider's insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

## **11. Discrimination Prohibited**

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

## **12. Indemnity and Insurance**

12.1. Indemnity: Provider acknowledges responsibility for any and all liability arising out of the performance of this Agreement and shall hold City harmless from and indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this Agreement.

12.2. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall name City of Silverton, its officers, and agents as an additional insured.

12.3. Workers' Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407, or as a self-insured employer. Provider shall provide to City within ten (10) days after contract award a

certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Provider is self-insured.

12.4. Professional Errors and Omissions: Provider shall provide City with evidence of professional errors and omissions liability insurance for the protection of Provider and its employees, insuring against bodily injury and property damage and arising out of or resulting from Provider's negligent acts, omissions, activities or services, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability.

12.5. Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days written notice to City before they may be canceled.

12.6. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

### **13. Provider's Standard of Care**

The City agrees that in accordance with generally accepted construction practices, the Provider will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property. In the performance of its professional services, the Provider shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Provider will reperform any services not meeting this standard without additional compensation. Provider's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of Provider's failure to perform in accordance with the applicable standard of care or this Agreement.

### **14. Breach of Contract**

14.1 Provider shall remedy any breach of this Agreement within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this section, City may terminate that part of the Agreement affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

14.2 If the breach is material and Provider fails to remedy the breach in accordance with this section, City may declare Provider in default and pursue any remedy available for a default.

14.3 Pending a decision to terminate all or part of this Agreement, City unilaterally may order Provider to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this section, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

14.4 To recover amounts due under this section, City may withhold from any amounts owed by City to Provider, including but not limited to, amounts owed under this or any other Agreement between Provider and City.

## **15. Mediation/ Trial without a jury**

15.1 Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried to the Marion County Circuit Court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.

15.2 The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Marion County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section.

## **16. Early Termination**

16.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:

16.1.1 By mutual written consent of the parties; or

16.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Provider by mail or in person.

16.2 If City terminates the Agreement in whole or in part due to default or failure of Provider to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Provider shall be liable for all costs and damages incurred by City in procuring such similar service, and the Agreement shall be in full force to the extent not terminated.

16.3 If City terminates the Agreement for its own convenience, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier.

16.4 Termination under any provision of this section shall not affect any right, obligation or liability of Provider or City which accrued prior to such termination. Provider shall surrender to City items of work or portions thereof, referred to in Article's 20 and 27 of this Agreement for which Provider has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

## **17. Suspension of Work**

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Provider. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the Provider's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Provider. Should the City suspend, delay or interrupt the work and the suspension is not within the Provider's control, then the City shall extend the time of completion by the length of the delay and the method of compensation shall be adjusted to reflect the Provider's increase or decrease in its standard hourly rates.

## **18. Successors and Assignments**

18.1. Each party binds itself, and any partner, successor, executor, administrator, or assign to this Agreement.

18.2. Neither City nor Provider shall assign or transfer their interest or obligation hereunder this Agreement without the written consent of the other party. Provider must seek and obtain City's written consent before subcontracting any part of the work required of Provider under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subsection shall be void.

## **19. Access to Records**

City shall have access upon request to such books, documents, receipts, papers and records of Provider as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years unless within that time City specifically requests an extension. This clause shall survive the expiration, completion or termination of this Agreement.

## **20. Work is Property of City**

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this Agreement shall be the property of City.

## **21. Errors**

Provider shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost.

## **22. Law of Oregon**

This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Marion County, Oregon.

## **23. Adherence to Law**

Provider shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Provider is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

## **24. Modification**

Any modification of the provisions of this Agreement, in addition to those provided for in Section 5 of this Agreement, shall not be enforceable unless reduced to writing and signed by both parties.

## **25. Integration**

This Agreement, including but not limited to Exhibits and Provider's proposal submitted to City, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations or agreements. In case of conflict among these documents the provisions of this Agreement shall control.

## **26. Payment for Labor or Materials.**

Provider shall make prompt payment of any claim for labor, materials or services furnished to the Provider by any person in connection with this Agreement as such claim becomes due. Provider

shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Provider. If the Provider fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Provider under this Agreement.

**27. Miscellaneous / General**

27.1. Force Majeure. Neither party shall be responsible for damages or be deemed to be in default of Agreement by reason of delays in performance due to acts of God; strikes, lockouts, or industrial disturbances; acts of public enemies; orders of the government of the United States, or the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; riots; epidemics; and similar occurrences outside the control of Provider. In the cause of such an event happening, the time of completion shall be extended accordingly.

27.2. Intellectual Property. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this section. Provider may retain a nonexclusive right to use any intellectual property that is subject to this section. Provider shall transfer to the City any data or other tangible property generated by Provider under this Agreement and necessary for the beneficial use of intellectual property covered by this section.

27.3. Conflict of Interest. Except with City’s prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant’s professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

27.4. No Waiver of Legal Rights. A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

The PROVIDER and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

PROVIDER:

CITY OF SILVERTON:

\_\_\_\_\_  
Name of Consultant Firm

By \_\_\_\_\_  
Ron Chandler, City Manager

Signed \_\_\_\_\_

Approved as to form:

Typed or  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Title: \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Employer I.D. No. \_\_\_\_\_

**Pettit Trail Project**

Task	Task Description	PM LA \$141.00	Sr. LA \$169.00	LA1 \$95.00	Sr. Civil Engineer \$207.00	Civil Designer \$100.00	Cost Estimator \$150.00	SR PLS Survey \$250.00	PLS Survey \$151.00	Survey Tech \$133.00	3-MAN Survey Crew \$285.00	Geotech Principal \$235.00	Geotech PM \$172.00	Geotech Staff \$140.00	Geotech Admin \$102.00	Project Controls \$125.00	NV5 Sub-total	Laurelin Arborist \$170.00	Sub/Laboratory Fees	Winterbrk Wetlands Lump Sum	Item Totals
<b>Task 1: Pre-Design</b>																					
00101	Project Kickoff Meeting (and prep)	4	2		2												\$1,316				\$1,316
00102	Site visit to walk/stake preliminary trail alignment	8			8				8								\$3,848	10			\$5,548
00103	Site Topography Survey and Field staking prelim trail alignment	4					4		44	80							\$30,216		\$1,900		\$32,116
00104	Tree Survey (NV5 will produce Tree Plan)	4		12					8								\$2,788	120			\$23,168
00105	Geotechnical Investigation and Report	2									1	20	12	8			\$6,453		\$500		\$6,953
00106	Wetland Determination and Environmental Planning	4															\$564			\$27,195	\$27,759
00107	Project Setup and Management	8													6		\$1,878	3			\$2,388
	<b>Total Task 1</b>	<b>34</b>	<b>2</b>	<b>12</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>60</b>	<b>80</b>	<b>1</b>	<b>20</b>	<b>12</b>	<b>8</b>	<b>6</b>	<b>\$47,043</b>	<b>\$22,610</b>	<b>\$2,400</b>	<b>\$27,195</b>	<b>\$99,248</b>
<b>Task 2: Preliminary Engineering 60%</b>																					
00201	Trail Alignment Design	16	4	12	4	16											\$6,500				\$6,500
00202	Cover Sheet	1		2													\$331				\$331
00203	Existing Conditions/Demo Plan	4		12	2	4											\$2,518	10			\$4,218
00204	Erosion Control and Grading Plan	4			16	40											\$7,876				\$7,876
00205	Bridge Specific EC sheet				1	2											\$407				\$407
00206	Site Materials/Layout Plan	12	4	16	4	8											\$5,516				\$5,516
00207	Site Details	12	4	16	2	16											\$5,902				\$5,902
00208	Signing and Striping plan (road crossing) (wayfinding signs)	4		8	2	4											\$2,138				\$2,138
00209	Electrical/Lighting Plan and Details	2															\$282				\$282
00210	Landscape Restoration Plan	2	4	16													\$2,478				\$2,478
00211	Coordinate Bridge Design/Manufacturer	12			2												\$2,106				\$2,106
00212	Preliminary Cost Estimate	4					20										\$3,564				\$3,564
00213	City Review Period Coordination/Edits	4															\$564				\$564
00214	Project Management/Coordination	16													4		\$2,756				\$2,756
	<b>Total Task 2</b>	<b>93</b>	<b>16</b>	<b>82</b>	<b>33</b>	<b>90</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>\$42,938</b>	<b>\$1,700</b>	<b>\$0</b>	<b>\$0</b>	<b>\$44,638</b>
<b>Task 3: Public Meeting</b>																					
00301	Prepare exhibits and agenda for Public Meeting	2		8													\$1,042				\$1,042
00302	Attend/present at Public Meeting	4															\$564				\$564
00302	Attend/present at City Council Meeting	2															\$282				\$282
00302	Client Coordination during Public Meeting Period	2															\$282				\$282
	<b>Total Task 3</b>	<b>10</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$2,170</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,170</b>
<b>Task 4: Final Engineering 100%</b>																					
00401	Trail Alignment Design Adjustments	12	2	24	2												\$4,724				\$4,724
00402	Finalize/Issue Arborist Report	2															\$282	20			\$3,682
00403	Cover Sheet	1		2													\$331				\$331
00404	Existing Conditions/Demo Plan	1		8													\$901	10			\$2,601
00405	Erosion Control and Grading Plan	2			12	32											\$5,966				\$5,966
00406	1200-C?				2	4											\$814				\$814
00407	Site Materials/Layout Plan	12	2	16	2												\$3,964				\$3,964
00408	Site Details	8	2	12													\$2,606				\$2,606
00409	Landscape Restoration Plan and Details	2	4	12													\$2,098				\$2,098
00410	Final Cost Estimate	4					16										\$2,964				\$2,964
00411	Technical Specifications	12	2														\$2,030				\$2,030
00412	Project Management/Coordination	12													4		\$2,192				\$2,192
	<b>Total Task 4</b>	<b>68</b>	<b>12</b>	<b>74</b>	<b>18</b>	<b>36</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>\$28,872</b>	<b>\$5,100</b>	<b>\$0</b>	<b>\$0</b>	<b>\$33,972</b>
	<b>Total Design Labor Hours:</b>	<b>205</b>	<b>30</b>	<b>176</b>	<b>61</b>	<b>126</b>	<b>36</b>	<b>4</b>	<b>0</b>	<b>60</b>	<b>80</b>	<b>1</b>	<b>20</b>	<b>12</b>	<b>8</b>	<b>14</b>	<b>833</b>	<b>173</b>			
<b>Total Design Fees</b>																					
	<b>Subtotal Design Labor Fees:</b>																<b>\$121,023</b>	<b>\$29,410</b>	<b>\$2,400</b>	<b>\$27,195</b>	<b>\$180,028</b>
	<b>Reimbursable Non-Labor Expenses @ 2.00%</b>																<b>\$2,420</b>	<b>\$588</b>			<b>\$3,009</b>
	<b>Subconsultant Markup (8%)</b>																<b>\$2,353</b>	<b>\$192</b>	<b>\$2,176</b>		<b>\$4,720</b>
	<b>Total Project Design Fees</b>																<b>\$123,443</b>	<b>\$32,351</b>	<b>\$2,592</b>	<b>\$29,371</b>	<b>\$187,757</b>
<b>Task 5: Permitting/Bidding</b>																					
00501	Coordinate plans for permits, respond to permit comments.	8	2		4	8											\$3,094				\$3,094
00502	Coordinate bidding plans and specifications with City	4			2												\$978				\$978
00503	Attend pre-bid meeting; Bid addenda; Review bids	4		2	2	0											\$1,168				\$1,168
	<b>Total Task 5</b>	<b>16</b>	<b>2</b>	<b>2</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$5,240</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$5,240</b>
<b>Task 6: Construction Administration</b>																					
00601	Respond to RFI's, Review Submittals, ASI's as needed	16	4	4	6												\$4,834				\$4,834
00602	Arborist Construction Oversight												2				\$0	50			\$8,500
00603	Attend weekly progress meetings on site (4 LA/2 Civil)	16			8												\$3,912	10			\$5,612
00604	Produce/submit weekly site visit report (4 LA/2 Civil)	8			4												\$1,956				\$1,956
00605	Substantial Completion site visit and report	6			6												\$2,088	6			\$3,108
00606	Project Management/Coordination/Closeout	12													6		\$2,442				\$2,442
00607	As-needed geotech site visits and inspections											2	18	2			\$3,068				\$3,068
06607	As-built drawings	2		8	2	8											\$2,256				\$2,256
	<b>Total Task 6</b>	<b>60</b>	<b>4</b>	<b>12</b>	<b>26</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>20</b>	<b>2</b>	<b>6</b>	<b>\$20,556</b>	<b>\$11,220</b>	<b>\$0</b>	<b>\$0</b>	<b>\$31,776</b>
	<b>Total Construction Labor Hours:</b>	<b>76</b>	<b>6</b>	<b>14</b>	<b>34</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>20</b>	<b>2</b>	<b>6</b>	<b>230</b>	<b>66</b>			
<b>Total Construction Fees (Tasks 5 and 6)</b>																					
	<b>Subtotal Construction Labor Fees:</b>																<b>\$25,796</b>	<b>\$11,220</b>	<b>\$0</b>	<b>\$0</b>	<b>\$37,016</b>
	<b>Reimbursable Non-Labor Expenses @ 3.00%</b>																<b>\$774</b>				<b>\$774</b>
	<b>Subconsultant Markup (8%)</b>																<b>\$898</b>	<b>\$0</b>	<b>\$0</b>		<b>\$898</b>
	<b>Total Project Construction Fees</b>																<b>\$26,570</b>	<b>\$12,118</b>	<b>\$0</b>	<b>\$0</b>	<b>\$38,687</b>
	<b>Total Design and Construction Fees</b>																				<b>\$226,445</b>


Highlighted totals represent estimated hours if both the Pettit Trail and Pickleball Court projects work on the same schedule, so these tasks would have overlap between the two projects. If the two projects do not work on the same schedule, these tasks may require more time.



**Silverton Pickleball Courts Project**

Task	Task Description	PM LA \$141.00	Sr. LA \$169.00	LA1 \$95.00	Sr. Civil Engineer \$207.00	Civil Designer \$100.00	Cost Estimator \$150.00	PLS Survey \$151.00	Survey Technician \$133.00	2-man Survey Crew \$198.00	Sr. PLS Survey \$250.00	Electrical Engineer \$156.00	Electrical Designer \$98.00	Geotech Principal \$235.00	Geotech PM \$172.00	Geotech Staff \$140.00	Geotech Admin \$102.00	Project Controls \$125.00	NV5 Sub-total	Sub	Laboratory Fees	Item Totals
<b>Task 1: Pre-Design</b>																						
00101	Project Kickoff Meeting (and prep)	4	2		2														\$1,316			\$1,316
00102	Site Topography Survey	4					8	23	50	2									\$15,231	\$1,350		\$16,581
00103	Geotechnical Investigation and Report	2												1	20	12	8		\$6,453	\$2,800	\$1,000	\$10,253
00104	Project Setup and Management	6																6	\$1,596			\$1,596
	<b>Total Task 1</b>	<b>16</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>8</b>	<b>23</b>	<b>50</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>20</b>	<b>12</b>	<b>8</b>	<b>6</b>	<b>\$24,596</b>	<b>\$4,150</b>	<b>\$1,000</b>	<b>\$29,746</b>	
<b>Task 2: Phase 1 Only Preliminary Engineering 60%</b>																						
00201	Pickleball Court Layout and Design Options	8	4	12	2														\$3,358			\$3,358
00202	Cover Sheet	1		2															\$331			\$331
00203	Existing Conditions/Demo Plan	2		4	2	4													\$1,476			\$1,476
00204	Erosion Control and Grading Plan	2			8	20													\$3,938			\$3,938
00205	EC details sheet.				1	2													\$407			\$407
00206	Site Materials/Layout Plan	10	4	16	4	4													\$4,834			\$4,834
00207	Site/Fencing Details	8	2	12															\$2,606			\$2,606
00208	Electrical/Lighting Plan and Details	2									6	26							\$3,766			\$3,766
00209	Site Utilities (Water, Sanitary)				8	20													\$3,656			\$3,656
00210	Coordinate sewer lift station design/sub/supplier				3														\$621			\$621
00211	Stormwater Facility and memo	1			4	8													\$1,769			\$1,769
00212	Landscape Plan and Details	2	4	10															\$1,908			\$1,908
00213	Draft Technical Specifications	8	2		2														\$1,880			\$1,880
00214	Preliminary Cost Estimate	4					20												\$3,564			\$3,564
00215	City Review Period Coordination/Edits	4			2	4													\$1,378			\$1,378
00216	Project Management/Coordination	12																4	\$2,192			\$2,192
	<b>Total Task 2</b>	<b>64</b>	<b>16</b>	<b>56</b>	<b>36</b>	<b>62</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>26</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>\$37,684</b>	<b>\$0</b>	<b>\$0</b>	<b>\$37,684</b>
<b>Task 2.1: Phase 2 (Additional) Preliminary Engineering 60%</b>																						
00301	Parking Lot Design, Layout, and Details	4			8	16													\$3,820			\$3,820
00302	Revise Dog Park Layout, Fencing	6	2	8															\$1,944			\$1,944
00303	Additional General Plan Sheets (from Task 2 above)	8	2	16	4	16													\$5,414			\$5,414
00304	Davenport street extension (may need public plan set)				12	40													\$6,484			\$6,484
00305	Additional Electrical/Lighting Design	2									4	12							\$2,082			\$2,082
00306	Additional Stormwater Design	2			2	8													\$1,496			\$1,496
00307	Additional Cost Estimate Items and Calculations	2					8												\$1,482			\$1,482
	<b>Total Task 2.1</b>	<b>24</b>	<b>4</b>	<b>24</b>	<b>26</b>	<b>80</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$22,722</b>	<b>\$0</b>	<b>\$0</b>	<b>\$22,722</b>
<b>Task 3: Public Meeting</b>																						
00301	Prepare Exhibits and Agenda for Public Meeting	2		8															\$1,042			\$1,042
00302	Attend/Present at Public/Stakeholder Meeting	4																	\$564			\$564
00303	Prepare/Attend/Present at City Council Meeting	2																	\$282			\$282
00304	Client Coordination during Public Meeting Period	2																	\$282			\$282
	<b>Total Task 3</b>	<b>10</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$2,170</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,170</b>
<b>Task 4: Phase 1 Final Engineering 100%</b>																						
00401	Pickleball Court Layout Adjustments	8	2	12	2														\$3,020			\$3,020
00402	Cover Sheet	1		2															\$331			\$331
00403	Existing Conditions/Demo Plan	1		4															\$521			\$521
00404	Erosion Control and Grading Plan	2			8	24													\$4,338			\$4,338
00405	1200-C7				2	6													\$1,014			\$1,014
00406	Site Materials/Layout Plan	12	2	16	2														\$3,964			\$3,964
00407	Site/Fencing Details	8	2	12															\$2,606			\$2,606
00408	Electrical/Lighting Plan and Details	2									3	9							\$1,632			\$1,632
00409	Site Utilities (Water, Sanitary)	1																	\$141			\$141
00410	Stormwater Facility Design; Storm Report	2																	\$282			\$282
00411	Landscape Plans and Details	4	2	10															\$1,852			\$1,852
00412	Final Cost Estimate	4					16												\$2,964			\$2,964
00413	Final Technical Specifications	12	2																\$2,030			\$2,030
00414	Project Management/Coordination	12																6	\$2,442			\$2,442
	<b>Total Task 4</b>	<b>69</b>	<b>10</b>	<b>56</b>	<b>14</b>	<b>30</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>\$27,137</b>	<b>\$0</b>	<b>\$0</b>	<b>\$27,137</b>
<b>Task 4.1: Phase 2 (Additional) Final Engineering 100%</b>																						
00301	Parking Lot Design, Layout, and Details	2			6	12													\$2,724			\$2,724
00302	Revise Dog Park Layout, Fencing	2	2	6															\$1,190			\$1,190
00303	Additional General Plan Sheets (from Task 4 above)	6	2	12	4	12													\$4,352			\$4,352
00304	Davenport extension (use City street standards)	2			8	20													\$3,938			\$3,938
00305	Additional Electrical/Lighting Design	1									3	9							\$1,491			\$1,491
00306	Additional Stormwater Design/Storm Report Calcs	1																	\$141			\$141
00307	Additional Cost Estimate Items and Calculations	2					8												\$1,482			\$1,482
	<b>Total Task 4.1</b>	<b>16</b>	<b>4</b>	<b>18</b>	<b>18</b>	<b>44</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$15,318</b>	<b>\$0</b>	<b>\$0</b>	<b>\$15,318</b>
<b>Total Design Labor Hours (Full Project):</b>																						
		<b>199</b>	<b>36</b>	<b>162</b>	<b>96</b>	<b>216</b>	<b>52</b>	<b>8</b>	<b>23</b>	<b>50</b>	<b>2</b>	<b>16</b>	<b>56</b>	<b>1</b>	<b>20</b>	<b>12</b>	<b>8</b>	<b>16</b>	<b>973</b>			
<b>Total Design Fees (Full Project)</b>																						
	Subtotal Design Labor Fees:																		\$129,627	\$4,150	\$1,000	\$134,777
	Reimbursable Non-Labor Expenses @ 2.00%																		\$2,693			\$2,693
	<b>Total Project Design Fees</b>																		<b>\$132,220</b>	<b>\$4,150</b>	<b>\$1,000</b>	<b>\$137,370</b>
<b>Total Design Fees (Phase 1 Only, does not include Task 2.1 and Task 4.1)</b>																						
	Subtotal Design Labor Fees:																		\$91,587	\$4,150	\$1,000	\$96,737
	Reimbursable Non-Labor Expenses @ 2.50%																		\$2,290			\$2,290
	<b>Total Project Design Fees</b>																		<b>\$93,877</b>	<b>\$4,150</b>	<b>\$1,000</b>	<b>\$99,027</b>
<b>Task 5: Permitting/Bidding</b>																						
00501	Coordinate plans for permits, respond to permit comments.	12		8	4	12													\$4,480			\$4,480
00502	Coordinate bidding plans and specifications with City	4			2														\$978			\$978
00503	Attend pre-bid meeting; Bid addenda; Review bids	4		2	2														\$1,168			\$1,168
	<b>Total Task 5</b>	<b>20</b>	<b>0</b>	<b>10</b>	<b>8</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$6,626</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,626</b>
<b>Task 6: Construction Administration</b>																						
00601	Respond to RFIs, Review Submittals, ASI's as needed	16																				

**SILVERTON CITY COUNCIL STAFF REPORT  
TO THE HONORABLE MAYOR AND CITY COUNCILORS**

	<b>Agenda Item No.:</b>	<b>Topic:</b>
	4.2	Resolution No. 24-04 – Authorizing the City of Silverton to apply for a Local Government Grant from the Oregon Parks and Recreation Department
	<b>Agenda Type:</b>	
	Discussion/Action	
<b>Meeting Date:</b>		
	March 18, 2024	
<b>Prepared by:</b>	<b>Reviewed by:</b>	<b>Approved by:</b>
Jason Gottgetreu	Cory Misley	Cory Misley

Recommendation:

Adopt Resolution No. 24-04, authorizing the City of Silverton to Apply for a Local Government Grant from the Oregon Parks and Recreation Department and Delegating Authority to the City Manager to Sign the Application.

Background:

Oregon Parks and Recreation Department (OPRD) offers an annual grant application through the Local Government Grant Program (LGGP). The LGGP’s Large Grant Program would reimburse up to 60% of the City’s cost for the project, with a maximum grant request of \$1,000,000.

The City intends to submit a grant application for the Pickleball Project located on the City owned Westfield Property, adjacent the Senior Center. The City scoped the Design Services for a potential phase 1 project or a full build out project. The phase 1 project contemplated 3 pickleball courts and extending the gravel parking area adjacent to the dog park to provide additional parking. The full build out would include 6 courts, additional parking, restroom facilities, picnic tables, and the reorientation of the dog park.

The City intends to move forward with the full build out given the extension of Davenport Drive in to serve the proposed housing development on the Westfield Property would eliminate the current gravel parking area and would necessitate additional parking to satisfy the current uses of the dog park and skate park.

This grant offers an opportunity to address the pending loss of parking on the site as part of the Pickleball Project. While an exact cost estimate is not known, the takeaway from a meeting with ORPD was that it would be better to err on the high side in terms of a grant request as one could spend less funds than awarded but would have to make up any deficit if the project is a higher cost than estimated.

The City intends to submit a project cost of \$1,250,000 which would be a grant request of \$750,000 and would require a City Match of \$500,000. The City has sufficient Parks SDC Improvement funds to cover the match portion. The Conceptual Site Plan is to serve as the basis of design, though through the design process the layout may change due to more advantageous site layouts or other design considerations.

**SILVERTON CITY COUNCIL STAFF REPORT  
TO THE HONORABLE MAYOR AND CITY COUNCILORS**

With an approved resolution, staff would complete the application process and prepare to present to OPRD in June.

<b>Budget Impact</b>	<b>Fiscal Year</b>	<b>Funding Source</b>
\$500,000	2024-2025	Park Improvements 072-072-81040

Attachments:

1. Resolution No. 24-04
2. Conceptual Site Plan

**RESOLUTION**  
**24-04**

**A RESOLUTION OF THE SILVERTON CITY COUNCIL AUTHORIZING THE CITY OF SILVERTON TO APPLY FOR A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE DEVELOPMENT OF PICKLEBALL AND RELATED FACILITIES AND DELEGATING AUTHORITY TO THE CITY MANAGER TO SIGN THE APPLICATION**

**WHEREAS**, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

**WHEREAS**, the City of Silverton desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation acquisitions, improvements and enhancements; and

**WHEREAS**, City Council has identified improvements at the Pickleball Project as a City Council Goal and as a high priority need in the City of Silverton; and

**WHEREAS**, the City of Silverton has available local matching funds to fulfill its share of obligation related to this grant application should the grant funds be awarded; and

**WHEREAS**, the City of Silverton will provide adequate funding for on-going operations and maintenance of this park and recreation facility should the grant funds be awarded.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SILVERTON, AS FOLLOWS:**

Section 1: The City Council demonstrates its support for the submittal of a grant application to the Oregon Park and Recreation Department for development of Pickleball.

Section 2: This Resolution shall be effective following its adoption by the City Council.

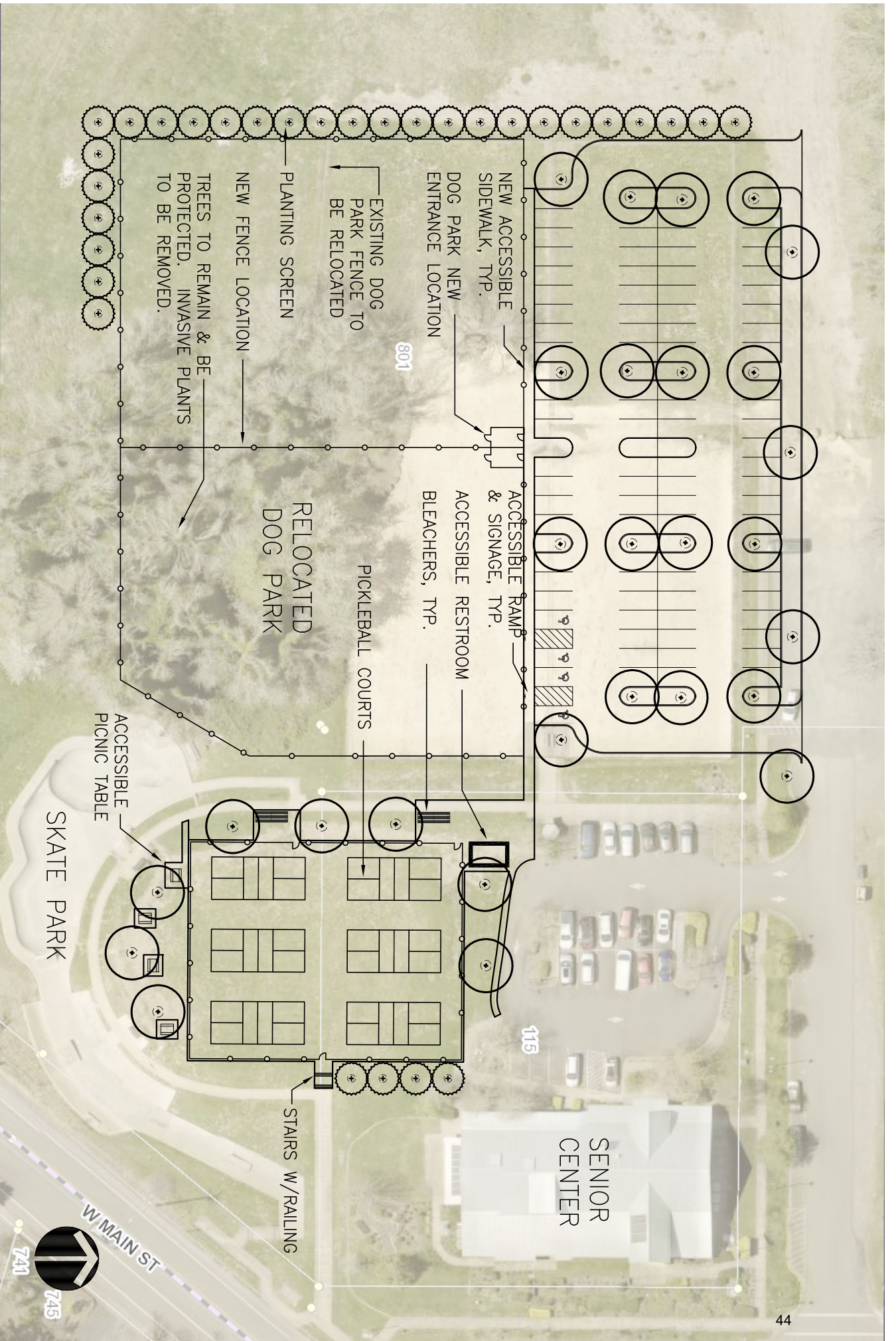
Resolution adopted by the City Council of the City of Silverton, this 18<sup>th</sup> day of March 2024.

\_\_\_\_\_  
Mayor, City of Silverton  
Jason Freiling

ATTEST

\_\_\_\_\_  
City Manager/Recorder, City of Silverton  
Cory Misley






# Silverton Pickleball

SCALE: 1"=60'



	<b>Agenda Item No.:</b>	<b>Topic:</b>
	4.3	Ordinance No. 20 An Ordinance of the Silverton City Council Amending Silverton Municipal Code Chapters 13.02 and 13.52 to Comply with State and Federal Requirements
	<b>Agenda Type:</b>	
	Discussion	
	<b>Meeting Date:</b>	
March 18, 2024		
<b>Prepared by:</b>	<b>Reviewed by:</b>	<b>Approved by:</b>
Brad Jensen	Travis Sperle	Cory Misley

Background:

City Council reviewed the suggested edits for chapters 13.52 and 13.02 - Restricted Discharges and Pretreatment, and associated definitions, during the February 26, 2024, City Council Work Session. Public notice for Ordinance No. 24-04 was posted on the City’s website, the bulletin board outside of City Hall, and was emailed to council members on Monday, March 11, 2024.

Edits to the City’s Restricted Discharges and Pretreatment and associated definition chapters of the Silverton Municipal Code (SMC) were a condition of the Mutual Agreement and Order (“MAO”) with the Department of Environmental Quality (DEQ). Specifically, the DEQ tasked the City with editing relevant code chapters to bring them into compliance with state and federal requirements. The City was also required to provide these draft chapters for DEQ review and ultimate conditional approval by December 31, 2023. The City complied, working with DEQ to obtain approval, conditioned on the City Council’s acceptance of these edits. The City now has 60 days to obtain Council’s approval.

Silverton Municipal Code (SMC) Chapter 13.52 contains the City’s Restricted Discharge and Pretreatment Provisions, while SMC Chapter 13.02 contains associated definitions. Both chapters required extensive revisions to bring them into compliance. A summary of the main elements of the revisions is as follows:

1. Amendments to the designated hazardous and prohibited discharges sections to generally align with federal requirements.
2. Added notification, monitoring, and other procedural requirements for accidental discharge and slug discharge control plans.
3. Added requirements for industrial users’ wastewater permits, including further details regarding existing environmental permits, operational descriptions, discharge details, waste monitoring location, flow measurements, pollutant measurements, and any other necessary information.
4. Added prohibition on diluting discharges.
5. Added federally required reporting requirements for users, including baseline monitoring reports, compliance schedule progress reports, reports on compliance with categorical pretreatment standards, periodic compliance reports, and required noticing of a violation and repeat sampling, as necessary.

6. Added public recordkeeping requirements for all users.
7. Added sample collection parameters and requirements.
8. Clarified and strengthened all remedies available to the City in the event of user noncompliance or violation. These include civil penalties (increased from prior limits to align with federal law), the ability to refer criminal violations to the state, and various methods of ensuring user compliance (including publishing the names of all significantly noncompliant users, entering onto and inspecting user facilities for potential noncompliance, and remedying noncompliance itself in the event of extreme circumstances).
9. Added requirement for director to establish and implement a Best Management Practices policy, which will address maintenance procedures, treatment requirements, operating procedures, and other maintenance practices for the wastewater treatment plant.
10. Associated definition edits in 13.02.
11. Various grammatical, formatting, clarifying, and other miscellaneous revisions.

<b>Budget Impact</b>	<b>Fiscal Year</b>	<b>Funding Source</b>
N/A	2023-2024	N/A

Attachments:

1. Ordinance 24-04 – An Ordinance of the Silverton City Council Amending Silverton Municipal Code Chapters 13.02 and 13.52 to Comply with State and Federal Requirements.

**ORDINANCE**  
**24-04**

**AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE CHAPTERS 13.02 AND 13.52 TO COMPLY WITH STATE AND FEDERAL REQUIREMENTS**

**WHEREAS**, the Department of Environmental Quality (“DEQ”) and the City of Silverton (“City”) entered a Mutual Agreement and Order (“MAO”) on May 17, 2023; and

**WHEREAS**, the MAO tasked the City with, among other elements, bringing the Silverton Municipal Code (“SMC”) chapters regarding restricted discharges and pretreatment into compliance with state and federal rules and regulations; and

**WHEREAS**, the SMC chapters pertaining to restricted discharges and pretreatment are SMC chapters 13.02 and 13.52; and

**WHEREAS**, the City duly sought DEQ review and approval of its proposed edits to SMC chapters 13.02 and 13.52 by December 31, 2023; and

**WHEREAS**, the City obtained DEQ conditional approval of the proposed SMC chapter edits via email on January 24, 2024; and

**WHEREAS**, the City properly noticed the proposed edits, as required by federal, state and local rules and regulations; and

**WHEREAS**, the City presented the proposed edits for City Council review during a work session at the February 26, 2024 City Council special meeting; and

**WHEREAS**, the City now desires to amend SMC chapters 13.02 and 13.52 to comply with state and federal law and to permit the imposition stringent civil penalties for non-compliance.

**NOW, THEREFORE, THE CITY OF SILVERTON ORDAINS AS FOLLOWS:**

Section 1: The Silverton Municipal Code is amended in substantially the same form as set forth in the attached Exhibit A (Chapters 13.02 and 13.52).

Section 2: This ordinance is and shall be effective within 30 days of its passage.

Section 3. If any provision, section, phrase, or word of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does in affect other provision that can be given effect without the invalid provision or application.



Section 4. All other provisions of the City of Silverton Municipal Code Title 13 shall remain unchanged and in full effect.

Ordinance passed by the City Council of the City of Silverton by a vote of \_\_\_\_ “for” and \_\_\_\_ “against” on this 18<sup>th</sup> day of March 2024.

\_\_\_\_\_  
Mayor, City of Silverton  
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**Silverton Municipal Code ~~2015~~ 2024**

**CHAPTER 13.52**

**RESTRICTED DISCHARGES AND PRETREATMENT**

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**13.52.010 Standard methods for testing and analysis.**

A. All measurements, tests, and analyses of the characteristics of water and waste to which reference is made in the Utility Code shall be determined in accordance with the ~~latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association~~ techniques prescribed in 40 CFR, part 136 and all subsequent amendments thereto, and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. In the event that no special manhole is required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

B. Sampling shall be carried out by customarily accepted methods to reflect the effect the effluent may be having on the sewer works and to determine the possible impact to the public welfare.

**13.52.020 Sanitary sewers – Prohibited discharges.**

No person shall discharge or cause to be discharged any ~~storm water~~ stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or polluted industrial process waters to any sanitary sewer.

**13.52.030 Storm ~~water~~ stormwater sewer use requirements.**

~~Storm water~~ Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as ~~storm~~ stormwater sewers, or to a natural outlet approved by the ~~Public Works~~ Director. Industrial cooling water or unpolluted process waters may be discharged to a ~~storm~~ stormwater sewer or natural outlet, upon written approval of the Director.

**13.52.040 Hazardous discharges designated.**

No person shall discharge or cause to be discharged any one of the following described waters or wastes to any public sewers:

A. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas; nor any kerosene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides; nor any petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

B. Any water or waste containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other waste, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l of cyanide in the waste as discharged to the public sewer;

C. Any water and waste having a pH lower than 5.5 or in excess of 11.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage ~~works;~~treatment plant;

D. Solids or ~~visceral~~viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the ~~sewage works~~wastewater treatment facility such as, but not limited to, ashes, feathers, tar, asphalt, lubricating oil, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshing, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

### **13.52.050 ~~Prohibited~~ Discharge limits; prohibited discharges.**

~~A.A.~~ The Director is authorized to establish specific discharge limits for users pursuant to 40 CFR 403.5(c). The Director shall establish such limits as a component of the Best Management Plan established pursuant to 13.52.480.

B. No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes ~~if it appears likely,~~into a public sewer, as measured at the point where the wastewater is discharged to the public sewer:

1. Any pollutant(s) which cause a discharge to exit a wastewater treatment facility in the opinion of the Public Works Director quantities or Designee, that such wastes can harm either concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes Interference or Pass Through;

2. Pollutants which create a fire or explosion hazard in the sewer system, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger public health, safety or welfare, or constitute a nuisance. In forming such opinion, the Public Works Director or Designee or wastewater treatment facility, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees centigrade);

3. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will give consideration to such factors as to quantities of waste in relation to flows and velocities in the sewer system, materials of construction of the sewers, nature of the cause interference with the sewer system, sewage treatment process, capacity of or equipment, or wastewater treatment facility;

4. Pollutants which result in the presence of toxic gases, vapors, or fumes within the wastewater treatment facility in a quantity that may cause acute worker health and safety problems;

5. Any trucked or hauled pollutants, except at discharge points designated by the sewage treatment plant, degree of treatability of waste in the sewage treatment plant, and other pertinent factors. wastewater treatment facility;

~~B.~~ The substances prohibited are:

~~4~~6. Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees centigrade);

~~2~~7. Any water or waste containing fats, gas, grease or oils, whether emulsified or not, in excess of 100 mg/l, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (zero and 65 degrees centigrade), or which has a temperature which will inhibit biological activity in the sewage treatment plant, and in no case wastewater with a temperature at the introduction into the sewage treatment plant receiving water which exceeds ~~40~~5104 degrees Fahrenheit (40 degrees centigrade);

~~3~~8. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower or greater shall be subject to the review and approval of the ~~Public Works~~ Director.

~~4~~9. Any water or waste containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not;

~~5~~10. Any water or waste containing iron, chromium, copper, zinc, lead, nickel, silver, mercury, cadmium or other similar toxic substances which exceed EPA or DEQ standards;

~~6~~11. Any water or waste containing high concentrations of phenols or other taste- or odor-producing substances; (as consistent with Environmental Protection Agency standards);

~~7~~12. Any radioactive waste or isotopes of such half-life or concentration as may exceed state or federal requirements;

~~8~~13. Any water or waste having a pH of lower than 5.5 or in excess of ~~9~~11.5;

~~9~~14. Materials which exert or cause:

a. Unusual concentrations of inert suspended solids, such as fuller's earth, lime slurries and lime residues, or of dissolved solids such as sodium chloride and sodium sulphate,

b. Excessive discoloration, such as dye waste and vegetable tanning solutions,

c. Unusual BOD or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works,

d. Unusual volume of flow or concentration of waste constituting slugs; ~~as defined in Chapter 13.02-SMC~~;

~~40~~15. Water or waste containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving water.

C. A person may have an affirmative defense to Section 13.52.050.C.1 or .2 if it demonstrates that:

1. The person did not know or have reason to know that the discharge, alone or in conjunction with a discharge or discharges from other sources, would cause the alleged violation; and
2. The discharge was in compliance with properly developed local limits prior to and during the alleged violation; or
3. If a local limit designed to prevent the alleged violation has not been developed for the pollutants that caused the alleged violation, the discharge:
  - a. Occurred prior to and during the alleged violation; and
  - b. Did not change substantially in nature or constituents from prior discharge activity which was regularly in compliance with the requirements of this Chapter and associated rules.

**13.52.060 Notification of the discharge of hazardous waste.**

A. Any user who commences the discharge of hazardous waste shall notify the City, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the sewage treatment plant of a substance which, if otherwise disposed of, would be a hazardous waste under Section 13.52.040. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the sewage treatment plant, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under the requirements of this Chapter. The notification requirement in this subsection does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of this Chapter.

B. Dischargers are exempt from the requirements of subsection A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33€. Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. In the case of any notification made under this Section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

**13.52.070 Rejection or pretreatment conditions.**

If any water or waste are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics outlined in SMC 13.52.040 or 050, and which may have a detrimental effect upon the ~~sewage works~~wastewater treatment facility, processes, equipment or receiving water, or which otherwise may create a hazard to life or constitute a public nuisance, ~~the Public Works~~or may otherwise violate the wastewater treatment facility NPDES permit or an individual wastewater permit, the Director may:

~~A~~1. Reject the wastes;

~~B~~2. Require pretreatment to an acceptable condition for discharge to the public sewer and/or wastewater treatment facility;

~~C~~3. Require control over the quantities and rates of discharge; and/or

~~D~~4. Require payment to cover any increase of administering, or any other aspect of, the wastewater permit, the added cost of chemicals needed to address the situation, and the added cost of handling and treating the wastes not covered by existing taxes, fees or other charges under the provisions of the Utility Code.

**13.52.070080 Grease, oil, fat, and sand interceptors.**

Grease, oil, fat, and sand interceptors shall be provided when, in the opinion of the ~~Public Works~~ Director, they are necessary for the proper handling of wastes containing grease in excessive amounts, or any flammable wastes, and/or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the ~~Public Works~~ Director, and shall be located as to be readily and easily accessible for cleaning and inspection.



~~13.52.080~~**13.52.090** **Accidental Discharge/Slug Discharge Control Plans**

The Director shall evaluate whether each industrial user needs an accidental discharge/slug discharge control plan or other action to control discharges that are non-routine and episodic in nature (including, but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to in any other way violate the sewage treatment plant regulations, local limits established via Best Management Practices, permit conditions, or this Chapter). The Director may require any user to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control such non-routine and episodic discharges. Alternatively, the Director may develop such a plan for any user. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

1. Description of discharge practices, including non-routine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the Director of any such non-routine and episodic, or accidental, discharge, as required by Section 13.52.270 of this Chapter; and
4. Procedures to prevent adverse impact from any non-routine and episodic, or accidental, discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of sewage treatment plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

**13.52.100 Pretreatment facilities – Operation and maintenance.**

Where preliminary treatment or flow-equalizing facilities are provided for any water or waste, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's own expense.

~~13.52.090~~**110 Control manhole for tests.**

When required by the ~~Public Works~~ Director, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the ~~Public Works~~ Director. Any cost to the City for required non-city sampling or testing shall be paid by the owner affected. The manhole shall be installed by the owner at the owner's own expense, and shall be maintained by the owner so as to be safe and accessible at all times.

~~13.52.400~~**120. Special agreements not restricted.**

A. No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an

industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor, by the industrial concern, and provided such agreements ~~is~~are in compliance with EPA and DEQ regulations.

B. When requested, an industrial user must submit information on a survey form prepared by the ~~Public Works~~ Director before commencing discharge into the City wastewater system, identifying the nature and characteristics of the user's wastewater. The Director may periodically require industrial users to update the survey. Failure to complete this survey within the time set by the Director is grounds for terminating service to the industrial user or collection of associated fees, or both.

**13.52.130 Discharges Prohibited Without a Permit; New or Renewed Construction.**

A. No industrial user shall begin or recommence to discharge wastewater directly or indirectly into the City's municipal wastewater system without first obtaining a wastewater permit prior to beginning or recommencing such discharge.

B. No permittee shall violate the terms and conditions of a wastewater permit issued pursuant to this chapter. Obtaining a wastewater permit does not relieve a permittee from the obligation to obtain other permits required by federal, state, or local law, or to comply with federal law, state law, and the rules and regulations of this chapter.

C. An application for a wastewater permit renewal must be received at least 90 days before the current wastewater permit expires.

**13.52.120140. Permitting Existing Connections.**

Any industrial user, not already possessing a wastewater permit, that discharges industrial waste into the City wastewater system prior to the effective date of this chapter and who wishes to continue such discharges in the future, shall, within 90 days after the effective date, apply to the City for a wastewater permit, and shall not cause or allow discharges to the system to continue after 180 days of the effective date except in accordance with a wastewater permit issued by the ~~Public Works~~ Director.

~~**Permitting New or Renewed Connections.**~~

~~13.52.130 — A. Any industrial user proposing to begin or to recommence discharging industrial wastes directly or indirectly into the City wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge.~~

~~13.52.130 —~~

~~B. An application for a permit renewal must be received at least 90 days before the current permit expires.~~

**13.52.140150 Wastewater Permit Issuance.**

A. Within 60 days of the date the ~~Public Works~~ Director deems a wastewater permit application complete, the Director will evaluate the data furnished by the industrial user and determine whether a wastewater permit should be issued. The Director will issue a wastewater permit unless a circumstance identified in 13.52.~~140~~130(B) exists.

B. If any wastewater proposed to be discharged to the City wastewater system contains substances identified or possesses the characteristics enumerated in SMC 13.52.040 and 13.52.050 which, in the Director's judgment, may have a deleterious effect upon the City wastewater system, processes, equipment, or waters of the state, or otherwise create a hazard to life or constitute a public nuisance, the Director may:

1. Refuse to permit the discharge;
2. Require pretreatment to an acceptable condition for discharge into the City wastewater system; or
3. Require control over the quantities and rates of discharge.

**13.52.150160. Wastewater Permit Duration.**

~~Permits~~Wastewater permits shall be issued for a time period specified by the Director, not to exceed five years. Each wastewater permit shall indicate the specific date upon which it will expire.

**13.52.160170 Wastewater Permit Contents.**

A wastewater permit shall include such conditions deemed reasonably necessary by the ~~Public Works~~ Director, or designee, to prevent pass through or interference and to implement the objectives of this chapter.

A. Wastewater permits shall, at a minimum, contain:

1. A statement of wastewater permit issuance date, expiration date, effective date, and overall duration;
2. A statement that the wastewater permit is nontransferable;
3. Effluent limits applicable to the industrial user, including Best Management Practices, ~~based on applicable pretreatment standards in 40 CFR Part 403,~~ categorical pretreatment ~~requirements~~standards, local limits, and state and local law;
4. Monitoring, sampling, reporting, notification, and record keeping requirements, including an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
5. Statement of applicable penalties for violation of pretreatment standards, pretreatment requirements, and compliance schedules; and
6. Requirements to control spills or slug discharges as determined necessary by the POTW, including conditions for emergency suspension of the wastewater permit, or conditions thereof.

B. ~~Permits~~Wastewater permits may contain:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

~~2~~

2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

3. Limits on the instantaneous daily and monthly average, and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;

~~3~~

4. Requirements for the installation of pretreatment technology or construction of appropriate containment devices or other similar technologies or devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

~~4~~

5. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

~~5~~

6. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the City wastewater system;

~~6~~

7. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

~~7~~

8. Specifications for monitoring programs, which may include designation of sampling locations and frequency of sampling; the number, types, and standards for tests; and reporting schedules;

~~8~~

9. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days of such noncompliance where monitoring indicates a violation;

~~9~~

10. Compliance schedules for meeting pretreatment standards and pretreatment requirements;

~~10~~

11. Requirements for submission of periodic monitoring or special notification reports;

~~11~~

12. Requirements for maintaining and retaining plant records relating to wastewater discharge, and affording the Director or his access thereto;

~~12~~

13. Requirements for prior notification and approval by the ~~Public Works~~ Director, or designee, of any introduction of new wastewater pollutants or any change in the volume or character of wastewater prior to introduction in the City wastewater system;

~~13~~

14. Requirements for prior notification to and approval by the Director of any change in the manufacturing and/or pretreatment process;

~~14~~

15. Requirements for immediate notification of excessive, accidental, or slug discharges, or other discharge which may cause any problems to the City wastewater system;

~~15~~

16. A statement that compliance with the wastewater permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards and pretreatment requirements, including those which become effective during the term of the wastewater permit; and

~~16~~

17. Other conditions deemed appropriate by the Director to ensure compliance with this chapter; state and federal laws, rules, and regulations; and the terms of the wastewater permit.

C. In addition to the foregoing, the Director may require wastewater permits for industrial users to contain any or all of the following:

1. Identifying Information.

a. The name and address of the facility, including the name of the operator and owner.

b. Contact information, description of activities, facilities, and plant production processes on the premises;

2. Environmental Permits. A list of any environmental control permits held by or for the facility.

3. Description of Operations.

a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the sewage treatment plant from the regulated processes.

b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally

be, discharged to the sewage treatment plant;

c. Number and type of employees, hours of operation, and proposed or actual hours of operation;

d. Type and amount of raw materials processed (average and maximum per day);

e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

4. Time and duration of discharges;

5. The location for monitoring all wastes covered by the permit;

6. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the sewage treatment plant from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e);

7. Measurement of Pollutants.

a. The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.

b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Director, of regulated pollutants in the discharge from each regulated process.

c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.

d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in this chapter. Where the standard requires compliance with best management practices, the user shall submit documentation as required by the Director or the applicable standards to determine compliance with the standard.

e. Sampling must be performed in accordance with procedures set out in this Chapter.

8. Any other information as may be deemed necessary by the Director to evaluate the permit application.

D. All industrial users must comply with categorical pretreatment standards as a

condition of a wastewater permit.

E. The City reserves the right to establish, by ordinance or in individual wastewater permits, more stringent standards or requirements on discharges to the sewage treatment plant consistent with the purpose of this Chapter. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

### **13.52.170180 Wastewater Permit Appeals.**

A. Any person, including the permittee, may appeal the conditions imposed in a wastewater permit, or the issuance or denial of a wastewater permit within ten days of the issuance of the final wastewater permit by filing a notice of appeal, as provided for in SMCSection 13.52.380.250180.

~~A.~~B. Failure to submit a timely notice of appeal shall be a waiver of all rights to administrative review.

~~B.~~C. In addition to the requirements in SMCSection 13.52.380180, the appellant shall indicate the specific objection, the reasons for the objection, and alternative conditions, if any, the appellant seeks to have placed in the wastewater permit.

~~C.~~D. The effectiveness of the wastewater permit shall not be stayed pending resolution of appeal.

### **13.52.180190 Wastewater Permit Modifications.**

~~A. The Public Works~~ Upon its own volition or following a request by permittee for the same, the Director may modify a wastewater permit for good cause including, but not limited to, the following:

1. To incorporate any newly revised federal, state, or local pretreatment standards or pretreatment requirements;
2. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater permit issuance;
3. A change in the City wastewater system that requires either a temporary or permanent reduction or elimination of the permitted discharge;
4. Information indicating that the permitted discharge poses a threat to the City wastewater system, City personnel, or waters of the state;
5. Violation of any terms or conditions of the wastewater permit;
6. Misrepresentation or failure to disclose fully all relevant facts in the wastewater permit application or in any required reporting;



7. A revision or grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13; or

8. To correct typographical or other errors in the wastewater permit.

B. The filing of a request by the permittee for a wastewater permit modification does not stay any wastewater permit condition.

**13.52.190-200 Wastewater Permit Transfer.**

~~Permits~~Wastewater permits may not be reassigned or transferred from the permittee to a new industrial user ~~or other user.~~

**13.52.200-210 Wastewater Permit Reissuance.**

An industrial user shall apply for wastewater permit reissuance by submitting a complete wastewater permit application no later than 90 days before the expiration of the user's wastewater permit.

**13.52.210-220 Dilution.**

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

**13.52.230 Baseline Monitoring Reports.**

A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the sewage treatment plant shall submit to the Director a report which contains the information listed in subsection B, below. At least ninety (90) days prior to commencement of their discharge, new users, and users that become industrial users subsequent to the promulgation of an applicable categorical pretreatment standard, shall submit to the Director a report which contains the information listed in subsection B, below. A new user shall report the method of pretreatment it intends to use to meet applicable categorical pretreatment standards. A new user also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Users described above shall submit the information set forth below.

1. All information required in Section 13.52.170(C)(1)(a), Section 13.52.170(C)(2), Section 13.52.170(C)(3)(a), and Section 13.52.170(C)(6).

2. Measurement of pollutants.



a. The user shall provide the information required in Section 13.52.170(C)(7) (a) through (d).

b. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the City;

d. Sampling and analysis shall be performed in accordance with this Chapter;

e. The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the sewage treatment plant.

3. Compliance Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

4. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 13.52.240 below.

5. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with this Chapter and signed by an authorized representative.

### **13.52.240 Compliance Schedule Progress Reports.**

The following conditions shall apply to the compliance schedule required by Section 13.52.230(B)(3):

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine (9) months;

C. The user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

D. In no event shall more than nine (9) months elapse between such progress reports to the Director.

### **13.52.250 Reports on Compliance with Categorical Pretreatment Standard Deadline.**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new user or new source location following commencement of the introduction of wastewater into the sewage treatment plant, any user subject to such pretreatment standards and requirements shall submit to the Director a report containing (A) the location for monitoring all wastes covered by the permit, (B) information showing the measured average daily and maximum daily flow, in gallons per day, to the sewage treatment plant from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e), and (C) the information required by Section 13.52.230(B)(2). For users subject to equivalent mass or concentration limits, this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with this chapter. All sampling will be done in conformance with this chapter.

### **13.52.260 Periodic Compliance Reports.**

A. All industrial users must, at a frequency determined by the Director submit no less than twice per year (June and December) reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the

measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the Director or the Pretreatment Standard necessary to determine the compliance status of the user.

B. All periodic compliance reports must be signed and certified in accordance with this Chapter.

C. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

D. If a user subject to the reporting requirement in this Section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director, using the procedures prescribed in this Chapter, the results of this monitoring shall be included in the report.

#### **13.52.270 Reports of Potential Problems.**

A. If ~~an accidental~~a slug, or other discharge occurs which may cause problems for the City wastewater system, the user shall immediately notify the City by telephone of the incident. Notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

B. Unless waived by the Director, within five (5) days following ~~an accidental~~a discharge described in subsection A, the user shall submit a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any fines, civil penalties, expense, loss, damage, or other liability that may be incurred or imposed as a result of damage to the City wastewater system, wastewater treatment facility, natural resources, or persons or property.

C. Failure to notify the City of potential problem discharges shall be deemed a separate violation of this chapter.

D. Industrial users shall prominently post a notice on a bulletin board or other similar place readily accessible to the user's employees, advising the employees of whom to call in the event of a potential problem discharge, and shall train all employees in the emergency notification procedure.

E. Where the City has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling may not be required if:

1. The City performs sampling at the industrial user at a frequency of at least once per month, or the City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

2. Cost to the City for repeat analysis may be recouped per ~~SMG~~Section 13.52.060.

### **~~13.52.220-280~~ 13.52.280 Reports of Significant Production Change.**

An industrial user operating under a ~~waste discharge~~wastewater permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the City within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the City of such anticipated change will be required to meet the mass or concentration limits in its wastewater permit that were based on the original estimate of the long-term average production rate. For purposes of this subsection the term “significantly” will be defined in the wastewater permit.

### **~~13.52.230-15.52.290~~ 15.52.290 Recordkeeping**

Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under Section 13.52.490. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Director.

### **13.52.300 Notice of Violation/Repeat Sampling and Reporting.**

If sampling performed by a user indicates a violation, the user must notify the Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within thirty (30) days after becoming aware of the violation. Resampling by the industrial user is not required if the City performs sampling at the user’s facility at least once a month, or if the City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the industrial user.

### **13.52.310 Sample Collection**

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in subsection B and C below, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For periodic compliance reports, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements.

### **13.52.320 Inspection and Sampling.**

A. An industrial user shall allow the City to enter the facilities of the user without unreasonable delay; (and in no event longer than 24 hours following City's notice to such industrial user of its intent to enter the facilities), to ascertain whether the user is complying with pretreatment standards and pretreatment requirements. Industrial users shall allow the ~~Public works~~ Director, or designee, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

B. If an industrial user has security measures that require identification and clearance before entry, the industrial user shall make necessary arrangements with its security guards so that upon presentation of proper identification personnel from the City, state, and the EPA will be permitted entry without unreasonable delay to perform their specific responsibilities. An unreasonable delay shall be considered longer than 24 hours.

C. The City, state, and the EPA shall have the right to set up or require installation of such devices as are necessary to conduct sampling and/or metering of the industrial user's operations.

D. The City may require the industrial user to install all necessary monitoring equipment. The facility's sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the industrial user at the industrial user's expense. A qualified technician must calibrate all devices used to measure wastewater flow and quality at least twice yearly to ensure accuracy.

E. Any obstruction to safe and easy access to the industrial facility shall be promptly removed by the industrial user at the request of the Director and shall not be replaced. The costs of removal shall be borne by the industrial user.

F. Unreasonable delays in allowing City personnel access to the industrial user's premises shall be a violation of this chapter. An unreasonable delay shall be considered longer than 24 hours.

#### **~~13.52.240-330~~ Search Warrants.**

If the Director is refused access to a building, structure, or property, or any part thereof, and has probable cause to believe there may be a violation to this chapter or needs to conduct an inspection as part of a routine program designed to protect the overall public health, safety, and welfare of the community, the Director may apply for a search warrant from a court of competent jurisdiction. The application shall identify the specific location to be searched, and shall specify what locations may be searched and what property may be seized. After issuance, the Director will serve the warrant at reasonable hours.

#### **~~13.52.250-340~~ Confidential Information.**

A. Information and data on an industrial user obtained from reports, questionnaires, wastewater permit applications, wastewater permits, monitoring programs, and City inspection and sampling activities shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City attorney that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets, and are exempt from disclosure under applicable law.

B. Wastewater constituents and characteristics and other effluent data as defined by 40 CFR 2.302 are not confidential and will be made available to the public without restriction, unless the subject of pending or threatened legal claims, litigation, or other legal proceedings.

C. Any information determined to be exempt from disclosure under ~~subsection~~subsections A or B of this ~~section~~Section shall remain confidential, and



portions of a report which might disclose trade secrets or secret processes shall not be available for public inspection, provided that such information shall be made available to governmental agencies for uses related to this chapter or the NPDES ~~program~~permit. Notwithstanding ~~subsection~~subsections A or B of this section, no information is confidential if the information is relevant to, and necessary for, enforcement proceedings involving the person furnishing the report.

D. For the purposes of this ~~section~~Section, a specific request is made when the words “confidential business information” are stamped on each page containing such information. If no such specific request is made at the time of furnishing the report, the City may make the information available to the public without further notice.

E. All costs, expenses and ~~attorneys~~attorney fees associated with defending a request for confidential information shall be the responsibility of the industrial user requesting confidentiality.

### **13.52.270350 Publication of Industrial Users in Significant Noncompliance.**

The City shall comply with the public participation requirements of 40 CFR part 25 in the enforcement of all standards in this chapter. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the city limit of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable provisions of this chapter. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent (66%) or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits (as further defined by 40 CFR 403.3(l));

B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits (as further defined by 40 CFR 403.3(l)) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the Director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of sewage treatment plant or wastewater system personnel or the general public);

D. Any discharge of a pollutant that has caused imminent endangerment to human

health, welfare or to the environment or has resulted in the Director's exercise of its emergency authority under Section 13.52.320 to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance;

H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the local pretreatment program or any aspect of the wastewater treatment system.

### **13.52.360. Notification of Violation.**

Whenever any ~~industrial~~ user has violated or is violating this chapter, a wastewater permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a written notice of violation directing the user to come into compliance within a specified time. Within ten (10) days of the receipt of this notice, the ~~industrial~~ user shall submit an explanation of the violation and a detailed plan for the satisfactory correction of the violation and the prevention of future violation. Submission of this plan does not relieve the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this ~~section~~ Section shall limit the City authority to take emergency action without first issuing a notice of violation. If the user fails to submit such a required explanation, sewer service may be discontinued to such user unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated.

### **13.52.280~~370.~~ Consent Orders.**

The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with an industrial user to resolve issues of noncompliance. Such orders shall include the specific action to be taken by the industrial user to correct noncompliance within a time period specified in the order. Consent orders shall be judicially enforceable, and any costs, including attorney's fees, incurred by the City in seeking such enforcement shall be assessed against the industrial user as part of any judgment entered therein

### **13.52.290~~380.~~ Compliance Orders.**

When the Director finds an industrial user has violated or continues to violate any provision of this chapter, or a wastewater permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue an order discontinuing the industrial user's sewer service unless compliance is obtained within a



time certain stated in the order. Compliance orders may contain other requirements necessary and appropriate to correct noncompliance, including additional monitoring and changes to management practices designed to minimize the amount of pollutants discharged to the City wastewater system. The Director may require additional monitoring for at least ninety (90) days after consistent compliance has been achieved, after which monitoring conditions set forth in industrial user's discharge wastewater permit shall be followed

**13.52.300390. Cease and Desist Orders.**

A. When an industrial user has violated or continues to violate any provision of this chapter, wastewater permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a notice and proposed order to the industrial user to cease and desist all such violations and commanding the user to:

1. Immediately comply with all requirements.
2. Take such appropriate remedial or preventive action as may be needed to properly address the continuing or threatened violation, including halting operations and/or terminating the discharge.

B. The Director may order any industrial user that causes or contributes to a violation of this chapter, wastewater permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement to appear and show cause why a cease and desist order should not be issued.

C. The City will serve notice on the industrial user specifying the time and place for hearing, the nature of the proposed enforcement action, the reasons for such action, and a direction that the user appear and show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served upon the industrial user or the user's authorized representative, personally or by registered or certified mail, return receipt requested, at least ten days prior to the hearing. A cease and desist order may be issued immediately following the hearing.

**13.52.310400. Emergency Suspensions.**

A. The Director may immediately suspend any user's discharge that threatens to interfere with the operation of the City wastewater system, endangers the environment, or may cause violation of the NPDES ~~Permit~~permit.

B. Any user notified of a suspension of its discharge shall immediately terminate all discharges into the City wastewater system. In the event a user fails to immediately and voluntarily comply with the suspension order, the Director may take such steps deemed necessary, including immediate severance the user's connection to the City wastewater system. The Director may allow the user to recommence discharge when the user demonstrates to the satisfaction of the Director that endangerment has passed, unless termination proceedings under SMC Section 13.52.570410 have been initiated.

C. No hearing shall be required prior to any emergency suspension.

**13.52.320410. Permit Revocation.**

A. An industrial wastewater permit may be revoked if the user:

1. Fails to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
2. Fails to accurately report wastewater constituents and characteristics of its discharge;
3. Falsifies monitoring reports;
4. Refuses reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;
5. Tampers with monitoring equipment;
6. Refuses to allow the City timely access to the facility premises and records;
7. Fails to meet or otherwise exceeds effluent or other discharge limitations;
8. Fails to pay fines;
9. Fails to pay sewer charges;
10. Fails to meet compliance schedules;
11. Fails to complete a wastewater survey; or
12. Violates any pretreatment standard or pretreatment requirement, the user's wastewater permit, any order issued pursuant to this chapter, or any provision of this chapter.

B. Industrial users shall be notified of proposed termination and be offered an opportunity to appear and show cause why the wastewater permit should not be revoked. Termination of a wastewater permit shall not be a bar to, or a prerequisite for, taking any other enforcement action against the user.

C. Notice shall be served on the industrial user specifying the time and place for the show cause hearing, the reasons for wastewater permit revocation, and a direction that the user appear and show cause why the wastewater permit should not be revoked. The notice of the hearing shall be served upon the industrial user or the user's authorized representative personally or by registered or certified mail, return receipt requested, at least ten (10) days prior to the hearing. An order revoking the wastewater

permit may be issued immediately after the hearing.

**13.52.330420. Injunctive Relief.**

In addition to other relief, the City attorney may petition a court of competent jurisdiction for the issuance of temporary or permanent injunction to restrain a violation, or compel specific performance, of the terms and conditions of the wastewater permit, order, pretreatment standard or pretreatment requirement, or other provision of this chapter.

**13.52.340430. Civil Penalties – Industrial Users Only.**

A. The Director may impose upon any industrial user that has violated or continues to violate this chapter, any order or wastewater permit hereunder, or any pretreatment standard or pretreatment requirement a ~~maximum~~minimum civil penalty of ~~\$2,500~~One Thousand Dollars (\$1,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of this violation.

B. Where appropriate, the Director may accept mitigation projects in lieu of the payment of civil penalties where the project provides a valuable service to the City and the industrial user's expense in undertaking the project is at least ~~150~~one hundred-fifty percent (150%) of the civil penalty.

C. For purposes of this ~~section~~Section, the term "civil penalty" means the same as the term "administrative fine" as set forth in any Enforcement Response Plan adopted by the City Council pursuant to this Chapter's authority. Any civil penalty assessed pursuant to this ~~section~~Section will be based on the severity of the violation using the factors outlined in the Enforcement Response Plan.

**13.52.350440. Civil Penalties – Non-Industrial Users.**

A. A violation of SMGSection 13.52.020; 13.52.040(A)(B)(C); or 13.52.~~200~~210 is punishable by a civil penalty not exceeding ~~\$2,500~~Ten Thousand Dollars (\$10,000).

B. A violation of any other provision of this chapter is punishable by a civil penalty of not less than ~~\$50~~One Thousand Dollars (\$1,000). The second and subsequent violation of the same provision of this chapter within any one year period is punishable by a civil penalty of not less than ~~\$200~~One Thousand Dollars (\$1,000).

C. Any civil penalty assessed pursuant to this ~~section~~Section will be based on the severity of the violation using the factors outlined in a City Council-adopted Enforcement Response Plan, even if the offender is not a party to that Plan.

**13.52.360450. Criminal Penalties.**

The Director may refer civil and criminal violations to federal, state, or local agencies as appropriate.

**13.52.460. Remedies Nonexclusive.**

The ~~Public Works~~ Director shall prepare an Enforcement Response Plan to be adopted

by a resolution of the City Council for use with industrial users related to any violation of Chapter 13.52. The remedies provided for in this chapter are not exclusive, and the Director may take any, all, or any combination of these actions against a noncompliant user, and may bring more than one enforcement action against any noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's ~~enforcement response plan~~ Enforcement Response Plan; however, the Director may take other action against any user when the circumstances warrant.

### **13.52.370470. Water Supply Severance.**

Whenever an industrial user has violated or continues to violate the provisions of this chapter or orders, or wastewater permits issued hereunder, water service to the industrial user may be severed and service will only be resumed, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

### **13.52.380480. Administrative Review.**

A. Any person aggrieved by any decision or action of the Director may appeal such decision or action as provided in this ~~section~~ Section.

B. The appeal must be filed with the City Manager within ten (10) days after the date of the decision or action being appealed, must be in writing and must state:

1. The name and address of the appellant<sub>;</sub>
2. Nature of the decision or action being appealed<sub>;</sub>
3. The reason the decision or action is incorrect<sub>;</sub> and
4. What the correct decision or action should be.

C. An appellant who fails to file such a statement within the time permitted waives all objections, and the appeal shall not be considered.

D. Unless the appellant and City agree to a longer period, an appeal shall be heard by the City Council within forty-five (45) days of the receipt of the notice of appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location of the hearing to the appellant.

E. The City Council will hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Council deems appropriate. At the hearing, the appellant may present testimony and oral arguments personally or by counsel.

F. If the appeal is from the modification of a wastewater permit pursuant or the imposition a civil penalty, the burden is on the Director to prove that the modification or civil penalty was proper. If the appeal is from the denial of a wastewater permit, the burden is on the appellant to prove that the denial was improper. In all other cases the

burden of proof is on the proponent of a fact or position.

G. The City Council will issue a written decision within thirty (30) days of the hearing date. The decision of the City Council is final.

H. An appeal fee established by Council resolution must accompany the statement of appeal.

**13.52.490. Best Management Practices.**

The Director shall draft and adopt a policy document containing Best Management Practices for maintenance procedures, treatment requirements, operating procedures, and other management practices to implement the general and specific prohibitions listed in 40 CFR 403.5(a)(1) and (b), the requirements of this Chapter, and to control site runoff, spillage or leaks, sludge or waste removal, or drainage from raw materials storage. The Public Works shall review the Best Management Practices periodically to ensure that they continue to reflect applicable law and the city's existing management practices.

**13.02.010 Definitions generally.**

Unless the context specifically indicates otherwise, the meaning of terms used in the utility code are as follows:

Act or “the Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

“Authorized or duly authorized representative of the user” means,

1. If the user is a corporation:

a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

3. If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

4. The individuals described in paragraphs 1 through 3, above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

“Air gap” means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device, and the flood level rim of such vessel. All approved air gaps shall be at least double the diameter of the supply pipe, measured vertically, above the top of

the rim of the vessel, and in no case less than one inch. When an air gap is used at the service connection to prevent the contamination or pollution of the public potable water system, an emergency bypass shall be installed around the air gap system, and an approved reduced pressure principle device shall be installed in the bypass system.

“Alternative sewage disposal system” means alternative wastewater treatment process(es) and technique(s) which are proven methods providing for the reclaiming and reuse of water and productively recycled wastewater constituents, or otherwise eliminate the discharge of pollutants. (See Appendix E of the Innovative and Alternative Technology Guidelines, EPA Innovative and Alternative Technology Assessment Manual, MCD53.)

“ASTM” means the standard specifications or methods of the American Society for Testing Materials of the serial designation indicated by the number, and, unless otherwise stated, all references refer to the latest adopted revision of such specification or method.

“Auxiliary water supply” means any water supply on or available to the premises, other than the city’s approved public potable water supply. These auxiliary waters may include water from another provider’s public potable water supply, or any natural source(s) such as a well, spring, river, stream, harbor, etc., or “used waters” or “industrial fluids.” These waters may be polluted or contaminated, or they may be objectionable and constitute an unacceptable water source over which the city does not have sanitary control.

“Back-siphonage” means the flow of water or other liquids, mixtures or substances into the distributing pipes of a potable water supply system, from any source other than its intended source, caused by the sudden reduction of pressure in the potable water supply system.

“Backflow” means the flow of water or other liquids, mixtures or substances under pressure into the distributing pipes of a potable water supply from any source or sources other than its intended source.

“Backflow preventer” means a device or means designed to prevent backflow or back-siphonage.

“Best Management Practices” or “BMP” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the general and specific prohibitions listed in 40 CFR 403.5(a)(1) and (b), the requirements of this Chapter, and to control site runoff, spillage or leaks, sludge or waste removal, or drainage from raw materials storage, as further provided in Section 13.52.490. BMPs



include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

“BOD (biochemical oxygen demand)” means 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/liter (mg/l). (EPA Standard Methods 5210(B) shall be used for any tests of BOD.)

“Building drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building, and conveys it to the building sewers, beginning five feet (one and one-half meters) outside the inner face of the building walls.

“Building service line” means all water service piping on the customer’s side of the main service meter where the meter is within the public right-of-way or easement. Also, all other service connection piping between the meter and the main located on private property (excluding water meters) where the city does not have existing agreements to maintain and replace such piping.

“Building sewer” means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.

“Business day” or “working day” means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding any city-recognized holidays.

“City” means the City of Silverton.

“Categorical pretreatment standard” or “categorical standard” means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

“COD (chemical oxygen demand)” means the quantity of oxygen, expressed in milligram per liter, utilized by decomposition of organic and inorganic contaminants, dissolved or suspended in water, during a two-hour oxidation test. (EPA Standard Methods 5220(D) shall be used for any tests of COD.)

“Commercial business” means a business establishment which furnishes goods or services to either the general public or other commercial operations.



“Controlled cross-connections” means a connection between a potable water system and a nonpotable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

“Cross-connection” means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other nonpotable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include but are not limited to connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multiport tube, and solid connections.

“Customer” means the owner, agent, tenant or other authorized representative responsible for occupancy of the premises that is served by a city utility system. A person, corporation, association or agency which rents or leases premises shall be considered an agent of the property owner; also a “user.”

“Developer” means any person, company or corporation who purchases or holds an interest in real property with the intent to increase the value thereof by the installation of utilities, construction of a building or buildings, grading, ditching, improving or enhancing the ground or structures for the purpose of resale.

“Director” means the Public Works Director for the City, Or the Director’s designee.

“Domestic flow” means volume used during peak-hour usage at a minimum residual gauge pressure of 20 psi.

“Domestic wastewater” means wastewater of the type commonly introduced into a treatment works by residential users.

“Double-check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shutoff valves on each side of the check valves, plus properly located test cocks for the testing of each check valve. The entire assembly shall meet the design and performance specifications and approval of a recognized and city-approved testing agency for backflow-prevention devices. To be approved, these devices must be readily accessible for the in-line maintenance and testing.

“Environmental Protection Agency” or “EPA” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

“Existing source” means any source of discharge that is not a “new source.”

“Garbage” means the solid animal and vegetable waste from the domestic and commercial preparation, cooking and dispensing of food, and from handling, storage and sale of produce.

“Indirect discharge” or “discharge” means the introduction of pollutants into the sewage treatment plant from any nondomestic source.

“Industrial facility” means an establishment primarily engaged in manufacturing, processing or fabrication of goods.

“Industrial user” means 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 following divisions:

Division A – Agricultural, Forestry and Fishing.

Division B – Mining.

Division D – Manufacturing.

Division E – Transportation, Communication, Electric, Gas and Sanitary Services.

Division I – Services.

“Living unit” means any of the following:

**A**1. A single-family dwelling;

**B**2. A habitable unit of multifamily dwelling(s), including an apartment; or

**C**3. A condominium.

“Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the sewage treatment plant, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City’s NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following

statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

“Local limit” means the specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

“Mains” means distribution pipelines that are part of the city water system.

“Multi-user” means a customer supplied with water service to more than one living unit, commercial business or industrial facility, or combination thereof, from one water service connection.

“Natural outlet” means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

“New source” means:

1. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act or Chapter 13.52 of the Utility Code, that will be applicable to such source if such pretreatment standards are thereafter promulgated in accordance with that section or chapter, provided that:

a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this Section has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous onsite construction program: (i) any placement, assembly, or installation of facilities or equipment; or (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section.

“Nonpotable water” means water that is not safe for human consumption, or which is of questionable potability.

“NPDES Permit” means the City National Pollutant Discharge Elimination System permit.

“Operation and maintenance” means activities required to assure the dependable and economical function of the treatment works.

**A1.** “Operation” means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

**B2.** “Maintenance” means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

“Pass through” means a discharge which exits the sewage treatment plant into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City’s NPDES permit, including an increase in the magnitude or duration of a violation.

“Permittee” a user who receives a wastewater permit pursuant to Chapter 13.52.

“Person” means any individual, firm, company, association, society, group or corporation.

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

“Potable water” means any water which, according to recognized standards, is safe for human consumption.

“Premises” means the integral property or area, including improvements thereon, to which water service is or will be provided.

“Pretreatment requirements” means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

“Pretreatment standards” mean prohibited discharge standards, categorical pretreatment standards, and local limits.

“Prohibited discharge standards” mean the prohibitions set forth in Sections 13.52.020 through 13.52.050.

“Private sewer” means a privately owned and maintained lateral sewer system normally six or eight inches in diameter, installed to serve multi-unit structures on single-ownership properties, which cannot legally be further divided, such as apartments, mobile home parks, schools and condominiums.

“Properly shredded garbage” means the wastes from the preparation, cooking and disposing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

“Property owner” means the owner of the premises who is also the ultimate responsible party for all customer charges and fees. The property owner may also be the customer for any given premises.

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

“Reduced pressure principle device” means an assembly of two independently operating approved check valves with an automatically operating differential relief valve between the two check valves, tightly closing shutoff valves on either side of the check

valves, plus properly located test cocks for the testing of the check and relief valves. The entire assembly shall meet the design and performance specifications and approval of a recognized and city-approved testing agency for backflow-prevention assemblies. The device shall operate to maintain the pressure in the zone between the two check valves at a level less than the pressure on the public water supply side of the device. These devices must be readily accessible for in-line maintenance and testing, and be installed in a location where no part of the device will be submerged.

“Replacement” means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term “operation and maintenance” includes replacement.

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

“Service connection” means a water connection or sewer connection as the context indicates.

“Service connection charge” means the fee levied to pay for the cost of labor, materials and any inspection required during the construction of a utility service line from the water or sewer main to the property that is to be served, with the charges to be itemized on a standard city billing form.

Sewage, Sewerage, or Sewer Water. See “wastewater.”

“Sewage treatment plant” means ~~any arrangement of devices and structures used for treatment of sewage.~~

~~“Sewage works” means all~~ publicly owned facilities for collecting, pumping, treating and disposition of sewage which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

“Sewer” means a pipe or conduit for carrying sewage.

“Sewer connection” means a public sewer that has been constructed to the property line or right-of-way line from a public main for the sole purpose of providing a connection for the building sewer.

~~“Slug” means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operation.~~

“Significant industrial user” means:

1. An industrial user subject to categorical pretreatment standards; or
2. An industrial user that:
  - a. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the sewage treatment plant (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
  - b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the sewage treatment plant; or
  - c. Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the sewage treatment plant’s operation or for violating any pretreatment standard or requirement.
3. Upon a finding that a user meeting the criteria in Subsection B of this part has no reasonable potential for adversely affecting the sewage treatment plant operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

“Significant noncompliance” has the meaning set forth in Section 13.52.350.

“Slug load” or “slug discharge” means any discharge of water, sewage or industrial waste at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 13.52.090. This includes any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the sewage treatment plant’s regulations, local limits or permit conditions.

“Stormwater” means a sewer designed to carry only stormwaters, surface runoff and street wash waters, and drainage.

“Surface water” means all natural water whose surface is exposed to the atmosphere, including natural drainage ways, stream corridors, rivers, ponds, wetlands, and impoundments.

“System development charge” means the fee or charge assessed to each commercial business, industry or living unit for the right to connect to the city’s sewer or water system, and which is used for expansion of those systems.

“Temporary service” means service of limited duration.

“TSS (total suspended solids)” means the total suspended matter that floats on the surface, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. (EPA Standard Methods 2450(D) shall be used for any tests for TSS.)

“Useful life” means the period during which a treatment works is planned and designed to be operated.

User. See “customer.”

“User service charge” means a charge levied on customers that may be a combination of a base fee, a usage fee and a fixed fee as set by resolution and/or ordinance.

“Utility” or “utility system” means sewer, water and stormwater management services provided by the city of Silverton.

“Utility code” has the meaning set forth in Section 13.01.010.

“Utility rate” is the rate established by city council to cover the cost of providing utility system services.

“Utility service” means services provided for water, stormwater and sewer.

“Wastewater” means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such incidental groundwater, surface water and stormwater as may be present.

“Wastewater permit” means a permit issued by the City to an industrial user pursuant to Chapter 13.52.

“Water connection” means the pipe, valves, fittings and meter by means of which the city conducts water from its main to and through a meter(s), but not including piping from the meter to the premises served.



“Water main” means water pipe and all necessary valves, fittings, hydrant connections and other appurtenances used for the distribution of water.

“Water system” means all municipally owned facilities of the city used to supply, process and distribute drinking-quality water to each customer service connection or temporary service.

“Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently. (~~Ord. 15-05 § 2, 2015~~)

**NATIONAL GUARD ARMORY  
LEASE AMENDMENT**

THIS LEASE AMENDMENT, dated March 14, 2024, is made by and between the STATE OF OREGON, acting by and through its Department of Military, hereinafter referred to as the Guard (Lessor) and the CITY OF SILVERTON, an Oregon municipal corporation, hereinafter referred to as the City (Lessee).

Lessor and Lessee are parties to a Lease dated April 1, 1994, as amended or supplemented by lease amendment March 20, 2014, (herein referred to as the Lease), covering Premises described as:

Beginning on the East side of Water Street in the City of Silverton, Marion County, State of Oregon, at the Northwest corner of a tract of land described in Certificate of Title No. 9, recorded in Volume 1, Folium 117 of Certificate of Title Records for said Marion County, said beginning point being also the Southwest corner of a lot deeded to Miss Emma Shonefield by Adda D. Martin and Mary Delle Davenport, said deed being recorded in Marion County Records, Book of Deeds, Volume 115, page 70; thence South 34° 27' East along the side of Water Street 100.00 feet; thence North 55° 30' West 100.00 feet to the South side of said lot deeded to Miss Emma Shonefield; thence South 55° 30' West 125.00 feet to the place of beginning, all situated in the City of Silverton, Marion County, State of Oregon.

Lessor and Lessee desire to amend or supplement the Lease.

In consideration of the mutual agreements contained herein, Lessor and Lessee agree that the Lease shall be amended or supplemented as follows:

1. **TERM:** The term of this Lease shall be extended for a period of Three (3) months commencing **April 1, 2024** and continuing through **June 30, 2024**.
2. **Notices:** **Effective April 1, 2024**, Section 18 will be replaced with the following:

**18. Notices:** Notices between the parties shall be in writing, effective when personally delivered to the address specified below, or if mailed, effective seventy-two (72) hours following mailing to the address for such party specified below or such other address as either party may specify by notice to the other.

Except as expressly amended or supplemented hereby, all other terms and conditions of the Lease shall remain in full force and effect.

**Parties:**

LESSOR:	Oregon Military Department Attn: AGI Real Estate Program Manager PO Box 14350 Salem, OR 97309-5047 Attn: Gary Williamson, or successor Phone: (971) 355-4131 / Cell (971) 375-0710 Email: <a href="mailto:gary.d.williamson18.nfg@army.mil">gary.d.williamson18.nfg@army.mil</a>
LESSEE:	City of Silverton 306 S. Water Street Attn: Cory Misley, City Manager or successor Phone: (503) 874-2205 Cell: (503) 737-9008 Email: <a href="mailto:cmisley@silverton.or.us">cmisley@silverton.or.us</a>


**NATIONAL GUARD ARMORY  
LEASE AMENDMENT**

LESSOR: STATE OF OREGON, acting by and through its  
Department of Military  
By \_\_\_\_\_  
Date \_\_\_\_\_

LESSEE: CITY OF SILVERTON, a municipal corporation of  
the STATE OF OREGON  
By \_\_\_\_\_  
Date \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
By \_\_\_\_\_  
Date \_\_\_\_\_

APPROVAL: STATE OF OREGON, acting by and through its  
Department of Administrative Services  
By \_\_\_\_\_  
Real Estate Services  
Date \_\_\_\_\_

	<b>Agenda Item No.:</b>	<b>Topic:</b>
	5.1	Resolution No. 24-05 – A Transfer Resolution to Increase Appropriations for the Second Street Project.
	<b>Agenda Type:</b>	
	Consent	
	<b>Meeting Date:</b>	
March 18, 2024		
<b>Prepared by:</b>	<b>Reviewed by:</b>	<b>Approved by:</b>
Kathleen Zaragoza	Sheena Lucht	

Recommendation:

Adopt Resolution No. 24-05 a Transfer Resolution to increase appropriations for the Second Street Project.

Background:

The City approved the Second Street Improvement Project budget in the 2022-2023 fiscal year (FY) to complete reconstruction of Second Street with pedestrian improvements and associated utility improvements from Lincoln Street south to where the sidewalk ends south of Whittier. The project also includes sidewalk improvements on the west side of Mill Street and realignment of the Mill and Whittier Street Intersection. The construction contract was awarded to M.L. Houck Construction Co on June 5, 2023, and Firwood Design Group LLC was awarded the contract for design and construction management of the project.

While reviewing the budget as compared to actuals for FY 2023-2024 it was discovered that the actual beginning fund balance was less than budgeted by \$265,203. Upon further auditing of the revenues and expenditures it was determined that no resources were being transferred from the Sewer or Water Funds for their related improvements to infrastructure.

This resolution will provide resources to cover the shortfall and to allocate to the appropriate fund the expenditures that pertain to each system. The transfers will be from Water for a maximum of \$294,830 and from Sewer for a maximum of \$83,596. This will provide the necessary resources for this project. Even though the appropriations for the project will be increasing there is not an expected increase for the total project.

Budget Impact	Fiscal Year	Funding Source
\$378,426	2023-2024	Sewer Fund, Water Fund and Second Street Imp Proj Fund

Attachments:

1. Resolution No. 24-05

**RESOLUTION**  
**24-05**

**A RESOLUTION OF THE SILVERTON CITY COUNCIL TO TRANSFER FUNDS DUE TO UNFORESEEN EXPENDITURES TO INCREASE APPROPRIATIONS TO SECOND STREET IMPROVEMENT PROJECT.**

**WHEREAS** certain expenditures could not be foreseen such as the actual amount of the beginning fund and the cost allocation for the project; and

**WHEREAS** Local Budget Law, ORS 294.463, authorizes the transferring of funds in these situations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SILVERTON, AS FOLLOWS:**

Section 1: The following transfers and appropriations are made:

<u>SEWER FUND</u>	<u>Increase</u>	<u>Decrease</u>
Transfers Out		
030-010-95228 Transfer to Second St Imp Project	\$ 83,596	
Contingency		
030-010-90001 Contingency		\$ 83,596
<u>WATER FUND</u>		
Transfers Out		
040-010-95228 Transfer to Second St Imp Project	294,830	
Contingency		
040-010-90001 Contingency		294,830
<u>SECOND STREET IMPROVEMENT PROJECT FUND</u>		
Transfers In		
228-000-46030 Transfer from Sewer Fund	83,596	
228-000-46040 Transfer from Water Fund	294,830	
Street Improvements		
228-228-85020 Construction Costs		378,426

Section 2: That this resolution is and shall be effective after its passage by the City Council.

Resolution adopted by the City Council of the City of Silverton, this 18th day of March 2024.

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Mayor, City of Silverton  
Jason Freiling

ATTEST

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City Manager/Recorder, City of Silverton  
Cory Misley