**CHAPTER 91: STREETS AND SIDEWALKS**

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**CONSTRUCTION, MAINTENANCE AND REPAIR OF SIDEWALKS**

**91.01 DEFINITIONS**

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

***Sidewalk:*** The part of the street right‑of‑way between the curb lines or the lateral lines of a roadway and the adjacent property lines and includes any culvert located in a part of the street.

**91.02** [**DUTY OF PROPERTY OWNERS**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_010&frames=on)

1. It is the duty and routine obligation of all owners of land adjoining any street in the City to maintain in good repair and safe condition the sidewalks in front of the land.
2. For purposes of this section, a sidewalk shall be deemed not in good repair, if among other things:
   1. Panels or pieces of same are displaced more than one-half (½) inch from adjacent panels or pieces; or
   2. Entire pieces or panels are absent, or there exist pieces or panels broken into parts smaller than one (1) square foot; or
   3. The grade from one piece or panel to the adjacent piece changes by more than one-half (½) inch per foot in any direction; or
   4. Handicap access ramps or driveways deviate from the slopes and dimensions included in the standards and specifications set by the City.

This list is not intended to be exclusive.

1. The City Manager, Engineering Director, or a designee shall have the power and authority to determine the grade and width of all sidewalks, the material to be used, and the specifications for the repair upon any street or part thereof, or within any district in the City.
2. To be in safe condition, a sidewalk must be free of ice, snow, litter, debris, or any other condition that creates risk of harm to person or property.

Penalty, see Section 91.99

**91.03** [**NOTICE OF DEFECTIVE SIDEWALKS**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_020&frames=on)

1. If the owner of any lot or part thereof or parcel of land fails to maintain the sidewalk along such property, it shall be the duty of the City, the Public Works Director, or a designee to mail to the property owner a notice entitled “Notice to Repair Sidewalk.” The notice may also be posted on the property adjacent to the sidewalk.
2. The notice shall direct the owner, agent or occupant of the property to immediately repair the sidewalk according to specifications prescribed by the City. The person mailing, and if applicable, posting the notice shall file with the City Recorder an affidavit of the mailing (and posting) of such notice, stating the date, to whom the notice was addressed, the address to which the notice was mailed, and place of posting, if applicable. The notice shall be sent to the last known address of the owner or agent, as shown on City or County records, and to the attention of the occupant at the property’s street address. A mistake in the name of the owner or agent, or a notice sent in the name of other than the true owner or agent of such property, or any mistake in address, shall not invalidate the notice. The owner, agent, or occupant of the premises shall cause the repairs to be made within the time specified by the notice.

**91.04** [**PERMIT FOR REPAIRS**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_030&frames=on)

The owner, agent, or occupant, before making the repairs, shall obtain from the City a permit prescribing the kind of repair to be made, the material to be used, and specifications therefore.

[**91.05 REPAIRS BY CITY**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_040&frames=on)

If the owner, agent, or occupant of any such lot or parts thereof, or parcel of land, fails, neglects, or refuses to make the sidewalk repairs within the time designated, the City may, for safety purposes, cause the repairs to be made and keep an accurate account of the cost of the labor and materials used in making the repairs, including legal, administrative and engineering costs, for each lot or parcel of land and shall make available a report containing such information upon the City Council’s request.

[**91.06 CHARGES FOR REPAIRS BY CITY**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_050&frames=on)

1. Upon completion of the repairs by the City, the Public Works Director shall determine the cost. The City Recorder or shall send a bill for the costs, by regular mail, to the owner of the property or the owner’s agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner’s agent that within thirty (30) days, the owner or owner’s agent must pay the bill in full. Upon approval by the City Council, the owner or owner’s agent may sign an agreement to pay the bill in installments. The installment program will allow applicants to make installment payments with interest for a period not to exceed five (5) years. The City Recorder shall administer the installment program and may adopt any rules, regulations, or forms necessary to administer the program. Beginning thirty (30) days from the date of mailing of the bill, any unpaid bill will accrue interest at the current local government investment pool rate plus a two percent (2%) administrative fee until paid.
2. Thirty (30) days from the date of mailing of the bill, the City Recorder or City Finance Director is authorized to place a lien on the property.
3. Foreclosure proceedings may be initiated to collect any lien due for more than sixty (60) days.
4. The City may also use any other remedies available to it to recover any unpaid bills, the interest thereon, and any costs or penalties.
5. In addition to the procedures set out above, the Council may establish local improvement districts for the purpose of repairing or reconstructing sidewalks and assessing and collecting the costs in accordance with the City’s local improvement procedures.

[**91.07 LIABILITY OF PROPERTY OWNER**](http://www.qcode.us/codes/milwaukie/view.php?topic=12-12_04-12_04_060&frames=on)

The owner(s) of land adjoining any street in the City shall be liable to any person suffering injury by reason of failure to maintain in good repair or safe condition the sidewalk in front of the land, or of any alley adjoining the land. The City disclaims any liability to any person suffering personal injury or property damage by reason of the owner’s negligence in failing to maintain a sidewalk or alley abutting the owner’s property in good repair and safe condition. The property owner(s) shall be liable to the City for any amounts which may be paid or incurred by the City by reason of all claims, judgment, or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of a property owner’s failure to satisfy the obligations imposed by this chapter to maintain in good repair and safe condition the sidewalks in front of the land.

**91.08 PROHIBITED ACTIONS AND USES OF SIDEWALKS**

1. No operator of a motor vehicle shall drive upon, stop, stand or park a vehicle on or over a sidewalk, planter, decorative median strip, or street planting strip.
2. No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street, or in an alley, with the intention of using it as a driveway.
3. No person shall ride or lead upon or along the sidewalks of the City any horse, pony, goat, or other animal, nor shall any person cause any such animal to be led or driven along the sidewalks for the purpose of propelling a cart or wagon. This section shall not prohibit the walking of dogs, cats, or other small pets upon and along the sidewalks.
4. No person shall camp or sleep on a sidewalk.
5. No Person, group(s) of people, material, or substance shall impact the normal and free movement of pedestrian traffic on sidewalk(s) or within alleys
6. Spitting on sidewalks is prohibited.
7. Roller skates, sleds and the like are prohibited on sidewalks.
8. Any person that intentionally, recklessly or negligently causes broken glass, junk, trash, or other debris to be placed upon a sidewalk or in an alley shall remove the debris from the sidewalk as soon as possible.
9. No person shall ride a bicycle, scooter, skateboards or rollerblades upon the paved sidewalks or paths used by pedestrians within the City. Reasonable use of motorized scooters is permitted only when necessary to accommodate the physical disability of the user, and not solely for transportation or recreation. It is permissible to push bicycles along these walkways, using due caution. After initial warning, the penalty for a violation shall be a fine and/or community service.

**STREETS**

**91.20 PUBLIC RIGHTS-OF-WAY**

1. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***PERSON:*** Individual, corporation, association, firm, partnership, joint stock company and similar entities.

***PUBLIC RIGHTS OF WAY:*** Include, but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

***WITHIN THE CITY:*** Territory over which the City now has or acquires jurisdiction for the exercise of its powers.

1. The City has jurisdiction and exercises regulatory control over all public rights‑of‑way within the city under the authority of the city charter and state law.
2. The City has jurisdiction and exercises regulatory control over each public right‑of‑way whether the city has a fee, easement or other legal interest in the right‑of‑way. The city has jurisdiction and regulatory control over each right‑of‑way whether the legal interest in the right‑of‑way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
3. No person may occupy or encroach on a public right‑of‑way without the permission of the City. The City grants permission to use the rights‑of‑way by franchises, licenses and permits.
4. The exercise of jurisdiction and regulatory control over a public right‑of‑way by the City is not official acceptance of the right‑of‑way and does not obligate the city to maintain or repair any part of the right‑of‑way.

(Prior Code, Section 1-119)  Penalty, see  91.99

**91.21 LICENSE PROCESS AND RATES**

1. Except as provided in this Section:
2. No individual, partnership, corporation or other legal entity shall hang, install, lay, place, construct or locate or obtain ownership of any wire, cable, fiber cable, pipe, conduit or other material designed for the purpose of transmitting or transporting physical objects or electronic current or light signals in, upon, beneath, over or across any public right‑of‑way or public property within the corporate limits of the City without first obtaining a right‑of‑way license from the City.

(2) No person that holds a valid franchise granted by the City need apply for a right‑of‑way license to perform actions consistent with and authorized by the franchise granted by the City.

(3) The City and all City employees in the performance of their duties as city employees are exempted from the requirement to obtain a right‑of‑way license before taking any action in the public right‑of‑way or on city property.

(4) The governments of Umatilla County, the State of Oregon and the United States are exempted from the requirement to obtain a right‑of‑way license where the Public Works Director has been informed of the proposed activities to take place in the right‑of‑way and has approved the activities.

(5) A right‑of‑way license shall not be required for a person who proposes to use the right‑of‑way for city property for a temporary use, for a duration of continuous use of less than seven days, where the temporary use is authorized by law or has been otherwise approved by the City.

1. No right‑of‑way license shall be granted:
2. When, in the opinion of the City or its designated official a grant of a right‑of‑way license would be detrimental to the public health, welfare or benefit of the City or the residents of the City.

(2) For an applicant who would otherwise be required to obtain a franchise from the City. This restriction shall apply, but is not otherwise limited to any person that seems to use the public right‑of‑way for the purpose of providing services to two or more persons residing within, or properties located within, the City.

(3) To a Person who will not have and retain ownership of the facilities proposed to be located in the public right‑of‑way. No right‑of‑way license shall be granted to a person who is not authorized to transact business in the state.

(4) To a Person who has submitted an application that is in any way determined to be incomplete, unless the applicant is able to remedy the incompleteness of the application within a reasonable time prior to the issuance of a right‑of‑way license and is not otherwise ineligible for a right‑of‑way license.

1. An application for a right‑of‑way license shall be submitted to the City.
2. The application shall be typed and shall contain the signature of a person authorized to make decisions for and bind the applicant. The application shall state the name of the applicant, the address of the applicant, the registered agent in the state of the applicant, the nature of and the intended purpose of the proposed facilities and the name, address and phone number of an individual who may be contacted in the event of an emergency or when deemed necessary by the City.
3. The application shall be accompanied by:
4. Engineered drawings or plans showing the nature of the facilities proposed to be installed, including the dimensions of the facility or facilities, the composition of all materials to be used, the method of proposed installation, including the size of any trenching that might be required in the course of installation, the nature of the proposed use of the facilities and other information as determined to be necessary by the City to make a determination concerning the appropriateness of granting a right‑of‑way license;
5. A map or maps of the City showing the proposed location of the facilities in the public right‑of‑way and on, under or across other property within the City. The map or maps shall be of sufficient size and detail to allow the City to determine the exact place or places in the City where the facility is proposed to be located. The map shall include the location of any physical conditions of significance to the proposed location of the facilities and shall include the location of any structure or building within 20 feet of any portion of the proposed location of the facility; and
6. The application fee in an amount as set by the City Council.

(D) A right‑of‑way license approved by the City shall become effective only upon fulfillment of the following terms and conditions and shall remain in effect only during the period that any of the terms and conditions containing a continuing obligation are met:

1. Payment of an annual fee for each lineal foot of public right‑of‑way or public property occupied by or traversed by the facility, in an amount set by City Council;
2. The City may waive all or a portion of the required fee in the event that the City and the person owning the facility enter into an agreement concerning in‑kind services to be provided by the person owning the facility. The in‑kind services may be of whatever form or type deemed by the City to be at least of equivalent value to the required license fee. Installation of any additional facility or provision of any service, whether for free or for a charge, in conformity with a written contract with the City concerning in‑kind services shall not require an additional right‑of‑way license and shall not be considered to be services requiring a franchise from the City;
3. A right‑of‑way license granted by the City shall cover and allow for only the uses and location described in the application for the license. Any additional installation or location of facilities or modification of use shall require an additional application for a right‑of‑way license and shall not be allowed until approval of the application;
4. The Person holding a right‑of‑way license shall be responsible for all costs of installation of any facilities associated with the right‑of‑way license and shall be responsible for the repair of any portion of the right‑of‑way or property in the right‑of‑way disturbed or damaged by the installation of the facility. Repairs must return the right‑of‑way and all other property to a condition equivalent to the condition of the right‑of‑way or property before the initiation of installation of the facility. The City may require the posting of a bond or the provision of other securities in an amount to be determined by the City to guarantee the payment of any cost to the City for any work required to return the right‑of‑way and any property in the right‑of‑way to a condition equivalent to the condition before initiation of installation of the facility;
5. Maintenance, repair or removal of the facility or any portion of the facility may be initiated only upon prior written approval of the City. All work done for the purposes of maintenance, repair or removal of the facility shall be subject to the same terms and conditions as apply to installation work;
6. The City may require the owner of the facility to move, at the owner’s expense, any portion of the facility when the movement is necessary for the completion of any work initiated by or under the authority of the City. The City shall not be responsible for any cost associated with damage or loss of business resulting from the requited movement of the facility. Except in the event of an emergency, the City will provide an ample prior notice to the owner of the facility concerning any needed relocation of the facility;
7. The owner of the facility retains all responsibility to notify other persons or entities of the location of the facilities in the right-of-way, and to respond to inquiries concerning the location of facilities. The City shall have no responsibility to provide information, nor responsibility for any damage that might result from providing or failing to provide the information. The owner of any facility installed pursuant to a right‑of‑way license shall agree to indemnify and hold harmless the City from any and all claims concerning damages arising from the installation, maintenance, repair, relocation, operation of the facility and all other obligations created by this section;
8. A right‑of‑way license does not allow the use of any private property within or outside the right‑of‑way;
9. A right‑of‑way license shall be non‑transferable; and
10. A right‑of‑way license may be terminated by the City 30 days after written notice of the termination is mailed to the last known address of the person to whom the license was granted. The City may terminate a right‑of‑way license for failure to abide by any of the terms and conditions of the license, for failure to abide by any contract entered into for in‑kind services or upon discovery by the City that the conditions under which the license was granted no longer apply. The owner of the facilities must remove the facilities within 64 days of the notice of termination being mailed. Removal shall be at the owner’s expense. Any facility or portion of a facility not removed within the time allowed may be removed by the City at the owner’s expense or may become the property of the City. A choice will be based upon the sole discretion of the City.

Penalty, see Section 91.99

**91.99  PENALTY**

(A) A violation of a provision of Sections 91.01 through 91.07 shall be punishable as a class “A” violation as defined by ORS chapter 153.

(1) Every full business day during which a business activity continues to be conducted in violation of this chapter shall be considered a separate offense.

(2) Offenses under this section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court-appointed attorney.

(Prior Code Section 4‑137)

(B) A violation of Section 91.20 or 91.21 shall be punishable as a class “B” violation as defined by the ORS chapter 153.