Chapter 1

GENERAL

Articles:

1.05 GENERAL PROVISIONS

1.05.005 Code Designated.
1.05.010 Definitions.
1.05.015 Substitute Officers.
1.05.020 Service and Notice.
1.05.025 Appeals to Council.
1.05.030 Construction.
1.05.035 Continuation of Ordinances.
1.05.040 Effect of Repeal.
1.05.045 Severability.
1.05.050 Section Catchlines.
1.05.055 Amendment and Repeal.
1.05.060 Publication.
1.05.065 Repeal.
1.05.070 Exclusions.
1.05.075 City Seal.
1.05.080 References to Other Laws.
1.05.085 Filing or Submittal.
1.05.090 Nuisance.

Article 1.05

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1.05.005 Code Designated.
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1.05.015 Substitute Officers.
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1.05.005 Code Designated.

All ordinances included in this and the following chapters are designated the "City of Gresham Revised Code" and will be referred to as "code." When referring to specific sections of the Gresham Revised Code, the letters "GRC" shall precede the numerical designation.

1.05.010 Definitions.

The following definitions and rules of construction shall be observed, unless inconsistent with the intent of the council or the context clearly requires otherwise, or a more specific definition is included in the applicable chapter or ordinance.

Actual Costs. City costs incurred for labor, materials & services, equipment, construction services, and administrative overhead.

Administrative Overhead. A rate, set using federal cost allocation guidelines, for indirect costs of providing labor, materials & services, equipment, and construction services.

Attorney. The city attorney appointed by the council or the attorney's designee.

City. The city of Gresham, Multnomah County, Oregon.

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

Council. City council of the city of Gresham.

County. Multnomah County, Oregon.

Day. The period of time between any midnight and the midnight following.

Daytime; nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Department; board; commission; office; officer or employee. A department, board, commission, office, officer or employee of the city.

Dwelling or Dwelling Unit. One or more rooms in a building or portion thereof designed for or that provides complete independent living facilities for one family and includes permanent provisions for sleeping, cooking and sanitation.

Family. An individual, or two or more persons related by blood, marriage, adoption, or legal guardianship, living together in a dwelling unit; may include up to four additional people who need not be related by blood, marriage, adoption, or legal guardianship.

Financial Assurance. A surety bond, cash deposit or other security acceptable to the manager to assure completion of specified work.

Gender. The masculine gender includes the feminine and neuter, and the feminine includes the masculine and neuter.

In the city. Territory over which the city now has or acquires jurisdiction for the exercise of its powers.

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

Law. Applicable federal law, the constitution and statutes of the state of Oregon, the code, ordinances, and applicable adopted rules and regulations of the city.

Manager. The city manager appointed by the council or the manager's designee.

Minor. A person under the age of 18 years, unless otherwise stated.

Month. A calendar month.

Number. The singular number includes the plural, and the plural the singular.

Oath. "Oath" includes affirmation.

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

Or; and. "Or" may be read "and" and "and" may be read "or", if the sense requires it.

ORS. Oregon Revised Statutes.

Owner, Property Owner, or Legal Owner. Any person having a legal or equitable interest in the whole or part of land or a building and includes, but is not limited to, a part owner, joint owner, tenant in common, tenant in partnership, joint tenant, tenant by the entirety, receiver or trustee in bankruptcy, mortgagor in possession, or vendee in possession under a land sale contract. The city shall provide notice to the owner of record as shown on the assessment and taxation records of Multnomah County.

Peace officer. A city police officer or other officer specified in ORS 133.005.

Person. A natural person or individual, corporation, cooperation, company, association, governmental entity, joint stock company or association, firm, partnership, limited liability company, estate, trust, or similar entity.

Person Responsible or Person in Charge of Property. The owner, contract purchaser, occupant, agent, property manager, or other person or entity with actual or apparent authority to represent the property owner's interest in the subject property, or other person having possession of the property. If no person is in possession of the property, then the person in control of the use of the property, or in control of the development of the property.

Personal property. Every type of property, except real property as defined below.

Preceding; following. Next before and next after, respectively.

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

Property. Both real and personal property.

Public Health and Safety. Includes, but is not limited to, protecting, maintaining and promoting the life, health, safety and welfare of humans, property, wildlife and the environment.

Public Rights-Of-Way. Includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, and all other public ways, including the subsurface under and air space over these areas under the jurisdiction of the city.

Public Works Standards. The council adopted design and construction requirements and drawings applicable to all public and privately financed public works projects.

Real property. Lands, tenements, and hereditaments.

Shall; may. "Shall" is mandatory, and "may" is permissive.

Sidewalk or Public Sidewalk. Any paved or unpaved walkway not open to public vehicular traffic and capable for the use of pedestrians located

within a public right-of-way, within a public access easement, within a dedicated public access way, or the land located between the curb line or outside edge of the shoulder of any road, street or highway and the adjacent property line.

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

State. The state of Oregon.

Street, Road or Highway. The portion of a public right-of-way open, used or intended for use of the general public for vehicles or vehicular traffic, including bridges, viaducts, other structures and any paved, graveled or dirt shoulder.

Tenant or Occupant. A person, either alone or with others, who has possessory rights in, or control over, the whole or part of land or a building.

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

To. "To" means "to and including" when used in reference to a series of sections of this code or the Oregon Revised Statutes.

Week. Seven consecutive days.

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

Year. A calendar year, except where otherwise provided.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1574, Amended, 8/14/2003; Ord. No. 1561, Amended, 12/03/2002; Ord. No. 1507, Amended, 09/19/2000)

1.05.015 Substitute Officers.

Unless this code provides to the contrary, the manager, attorney and city department heads, or their authorized representatives or deputies, may exercise a power granted by this code. The manager, attorney and department heads remain responsible for the performance of such acts.

1.05.020 Service and Notice.

(1) Except when this code provides a specific procedure for giving notice, when oral or written notice is required by this code, the notice may be given either by personal delivery to the person to be notified or by deposit in an official mailbox in a sealed, postage prepaid envelope, addressed to the last known business or residence address of the person to be notified. The time when the notice is deposited in a mailbox is the time when the notice is given.

(2) Proof of giving notice may be made by the certificate of an officer or employee of the city or by affidavit of a person 18 years of age or older.

1.05.025 Appeals to Council.

(1) Authorization of an Appeal to Council.

(a) The council shall review decisions if the applicable code section provides for an appeal. A person requesting review shall be the “appellant” and shall follow the procedures established in this section.

(b) The appeal procedures of this section shall not apply to decisions relating to personnel matters, land use, Measure 37 or Measure 49 claims, matters subject to charter provisions, or to the extent the applicable code section provides for specific procedures.

(2) Filing an Appeal. Within 10 calendar days of the date of decision from which appeal is requested, the appellant shall file with the manager a

written notice of appeal. If the written decision is not mailed within three calendar days of the date of decision, the appeal period shall commence on the date written notice of decision is mailed. An appellant who fails to file an appeal as provided by this section waives all objections to the decision and any appeal shall be summarily dismissed.

(3) Content of an Appeal. The appeal shall state:

(a) the name and address of the appellant,

(b) the nature of decision being appealed,

(c) a written statement of the reason for requesting the reversal, revocation or modification of the decision, and

(d) a written statement of the desired results of the appeal.

(4) Appointment of a Hearings Officer. Council may request the city attorney to appoint a hearings officer to hear the appeal pursuant to GRC 7.50.030 in which case the decision of the hearings officer shall be final.

(5) Manager Reconsideration. The manager may elect to reconsider the decision prior to the council hearing.

(6) Scheduling the Hearing. A hearing shall be scheduled as soon as practical after receipt of the notice of appeal. The manager shall notify the appellant and other persons who have an interest in the subject matter of the time and place of the hearing and the manner in which written documents can be submitted for the record. Notice shall be mailed at least 10 calendar days prior to the date written documents are to be submitted for inclusion in the hearing record.

(7) Submission of Written Material. Not later than the Monday two weeks prior to the hearing date, or if the Monday is a city holiday, the previous business day, the city, appellant and other interested persons who received notice shall submit all written documents to the city recorder for inclusion in the hearing record.

(8) Conduct of the Hearing. The hearing shall be on the record and no new testimony or evidence will be allowed unless the code provision provides otherwise or as authorized by council. If the hearing is on the record, the appellant, the city, and such other persons as authorized by council, may make arguments personally or by counsel. If the hearing is de novo, the appellant, the city, and such other persons as authorized by council, may present witnesses, offer evidence, and make arguments personally or by counsel. The rules of evidence as used by courts of law do not apply and cross examination is only allowed if authorized by council. Testimony and argument at the hearing is limited to oral presentations unless otherwise authorized by council. No new written material is permitted to be submitted at the hearing unless otherwise approved by council.

(9) Decision. Council shall make written findings, recommendations, or orders on any matter heard by it, and the manager shall send a copy to the appellant as soon as practical after adoption of the decision.

(10) Burden of Proof. If the appeal is from a denial of a license or permit, the appellant shall carry the burden of proving entitlement to the license or permit and how the city erred in its denial. If the appeal is from a revocation or suspension of a license or permit, the city shall carry the burden of proving that the revocation or suspension was proper. In all other cases, the burden of presenting evidence to support a fact or position by the preponderance of the evidence rests on the proponent of the fact or position.

(11) Effective Date. If a notice of revocation of a license or permit is the subject of the appeal, the revocation shall not take effect until final determination of the appeal. If authorized by the code, an immediate, summary and/or emergency suspension shall take effect upon issuance of, or such other time stated in, a notice of suspension.

(12) Fees. Council may establish, by resolution, fees for filing an appeal.

(13) Costs. If the city prevails in whole or in part on appeal, the decision-maker may elect to assess the cost of the hearing to the appellant.

(14) Exhaustion of Remedies. Before seeking judicial review of a city decision, a person must exhaust all administrative remedies.
(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1494, Amended, 02/15/2000)

1.05.030 Construction.

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

1.05.035 Continuation of Ordinances.

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

1.05.040 Effect of Repeal.

(1) The repeal of the prior code does not revive any ordinance in force before or at the time the prior code took effect. The repeal of the prior code does not affect a penalty incurred before the repeal took effect, or a legal action pending at the time of the repeal.

(2) The repeal or amendment of this code does not affect a penalty incurred before the repeal or amendment took effect, or a legal action pending at the time of the repeal or amendment.

(3) The manager may continue and complete an enforcement process commenced prior to the amendment of this code pursuant to the enforcement process of the amended code. Notices issued prior to the amendment shall constitute notice under the amended code.
(Ord. No. 1702, Amended, 03/03/2011; Ord. No. 1534, Amended, 10/02/2001)

1.05.045 Severability.

The sections, subsections, paragraphs, provisions, clauses, phrases, and words of this code and any ordinance enacted to amend, add or repeal existing provisions of this code are severable. If a section, subsection, paragraph, provision, clause, phrase, or word of this code or ordinance is declared by a court of competent jurisdiction to be unconstitutional or invalid, the judgment shall not affect the validity of the remaining portions of this code or ordinance. Every other section, subsection, paragraph, provision, clause, phrase or word of this code or ordinance enacted, irrespective of the enactment or validity of the portion declared unconstitutional or invalid, is valid.
(Ord. No. 1534, Amended, 10/02/2001)

1.05.050 Section Catchlines.

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

1.05.055 Amendment and Repeal.

This code is the general and permanent law of the city. The council may enact three types of general ordinances to affect this code.

Ordinances may (1) amend existing provisions, (2) add new provisions, or (3) repeal existing provisions. General ordinances shall specifically amend or repeal particular sections of this code. General ordinances creating new code sections shall integrate the new sections into the numbering system and organization of this code.

1.05.060 Publication.

In preparing revisions of the code for publication and distribution, the attorney may make editorial changes and corrections to this code, provided such changes shall not alter the sense, meaning, effect, or substance of an ordinance. Changes and corrections may include the following: the attorney may renumber sections and parts of sections, change the wording of catchlines, rearrange sections, change reference numbers to agree with renumbered chapters, sections, or other parts, substitute the

proper subsection, section, or chapter or other division numbers, strike out figures or words that are merely repetitious, change capitalization for the purpose of uniformity, and correct clerical, grammatical, or typographical errors.
(Ord. No. 1700, Amended, 03/03/2011)

1.05.065 Repeal.

The Gresham Code enacted by Ordinance No. 885 is repealed.

1.05.070 Exclusions.

This Gresham Revised Code does not repeal or amend any special ordinance; any ordinance relating to or resulting from annexation, naming of streets and public places, property acquisition or disposal of property, vacation of streets, public places or plats; any ordinance relating to budgets; any ordinance granting a franchise, license, or permit; nor any planning, zoning or land development ordinance.

1.05.075 City Seal.

The seal of the city consists of an impression one and seven-eighths inches in diameter with the words "City of Gresham, Oregon, Corporate Seal" on the outer rim.

1.05.080 References to Other Laws.

All specific references to the Multnomah County Code, Oregon Revised Statutes, Oregon Administrative Rules, United States Code, Code of Federal Regulation, or other laws and rules are to the provisions in effect as of March 3, 2011. All general references shall include amendments after the date of adoption by the city.
(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1561, Amended, 12/03/2002; Ord. No. 1534, Amended, 10/02/2001; Ord. No. 1507, Enacted, 09/19/2000)

1.05.085 Filing or Submittal.

Unless specified by a code, notice or otherwise, any item that must be filed or submitted to the city by a date certain must be physically received by the appropriate official no later than 5:00 p.m. on the applicable date or, in the case of weekends and holidays, the next business day.
(Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1561, Enacted, 12/03/2002)

1.05.090 Nuisance.

A violation of any provision of this code is a nuisance.
(Ord. No. 1561, Enacted, 12/03/2002)