

ORDINANCE NO. 1435-20

AN ORDINANCE RELATING TO THE PUBLIC WORKS CONSTRUCTION CODE; AMENDING TUALATIN MUNICIPAL CODE CHAPTER 2-03; AND CREATING NEW PROVISIONS.

WHEREAS, Tualatin Municipal Code Chapter 2-03 established the Public Works Construction Code to govern the design, materials, and workmanship of public improvements, public utilities, water quality facilities, and erosion and sediment control within the City of Tualatin;

WHEREAS, the Public Works Construction Code applies to all City owned public works facilities and construction projects in public right-of-way; and

WHEREAS, the Council wishes to amend the Tualatin Municipal Code to create an administrative rules process to adopt, amend, and repeal provisions of the Public Works Construction Code.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

**Section 1.** Tualatin Municipal Code Chapter 2-3 (Public Works Construction Code) is amended to read as follows:

**TMC 2-3-010 – Purpose of the Public Works Standards Construction Code.**

~~The Tualatin Public Works Construction Code as promulgated by the City Engineer shall be~~ The Purpose of this Chapter is to establish the Public Works Construction Code as the standards, specifications, and procedures to be used for all Public Works Construction within the City, and establish the process by which the Public Works Construction Code is to be adopted and changed.

**TMC 2-3-020 - Delegation of Administrative Rulemaking Authority to City Manager.**

~~The authority for maintaining and updating the Code is delegated to the City Engineer.~~

(1) The City Manager is authorized to establish, maintain, and update the Public Works Construction Code, in accordance with the process established by this Chapter. The Public Works Construction Code may be adopted, amended, or changed in parts at any time consistent with the provisions of this Chapter. Proposed changes in the Code shall not be effective unless first approved by motion of the Council.

(2) For purposes of this Chapter, the term “City Manager” means City Manager or the City Manager’s designee.

**TMC 2-3-030 - Notice of Administrative Rulemaking.**

(1) Prior to the adoption, amendment, or repeal of a provision of the Public Works Construction Code, the City Manager must:

(a) Give public notice of the proposed rule by posting copies of the proposed rule in a conspicuous location on the City's website; and

(b) Provide copies of the proposed rule to interested persons.

(2) In addition to the draft language of the rule considered to be adopted, amended, or repealed, the notice must also:

(a) Generally state the subject matter and purpose of the rule;

(b) State the time, place, and manner for persons to submit data or written comments about the proposed rule; and

(c) The date upon which the rule will be adopted and effective.

(3) Any person may be added to the City's interested persons list, for purposes of receiving notice of the adoption, amendment, or repeal of a provision in the Public Works Construction Code, by providing the City with an address or email address for the person wishing to receiving notice.

**TMC 2-3-040 - Opportunity for Comment; Consideration of Comments.**

(1) The City must provide persons with not less than 15 calendar days to submit data or written comments in response to the proposed adoption, amendment, or repeal of a provision in the Public Works Construction Code.

(2) The City Manager must consider all data and comments received from persons during the 15-day comment period prior to adopting, amending, or repealing a provision in the Public Works Construction Code.

**TMC 2-3-050 - Final Adoption; Filing with City Recorder; Available to Public.**

(1) Unless the City Manager specifies another date in the adoption order, all Public Works Construct Code rules are effective upon adoption.

(2) Unless otherwise required by law, the adoption, amendment, or repeal of a provision in the Public Works Construction Code need not be based upon, or supported by, an evidentiary record.

(3) The adopted Public Works Construct Code rule must be filed with the City Recorder. The City Recorder must compile and publish all adopted rules, including any temporary or emergency rules. Copies of current administrative rules must be made available to the public on the City's website and upon request.

**TMC 2-3-060 - Temporary and Emergency Rules; Effective Period.**

(1) **Temporary Rules.** Temporary rules may be adopted without notice or opportunity to comment, if needed to implement the provisions of any new or amended ordinance upon the ordinance's effective date.

(2) **Emergency Rules.** Emergency rules may be adopted, amended, or suspended without prior notice or opportunity to comment, or upon abbreviated notice and opportunity to comment, if the City Manager adopts written findings that an emergency exists, and the failure to act promptly will result in prejudice to the public interest.

(3) **Effective Period.** Any temporary or emergency rule adopted, amended, or suspended

is effective for a period of not more than 180 calendar days.

(4) **No Preclusion of Permanent Rule.** The adoption of a temporary or emergency rule does not preclude the subsequent adoption of an identical permanent rule.

**TMC 2-3-070 - Council Review of Administrative Rules.**

(1) The Council, upon its own motion, may review a proposed or adopted administrative rule at any time.

(2) After review of a proposed or adopted administrative rule, the Council may take no action, amend, or repeal an administrative rule. If the Council chooses to amend or repeal an administrative rule, the amendment or repeal must be by resolution of the Council.

**TMC 2-3-030 2-3-080 - Penalty Violations; Penalties.**

(1) In addition to other remedies provided in the Code, any person, firm, or corporation performing public works construction in violation who violates any provision of the Public Works Construction Code commits a civil infraction and is subject to a fine of up to \$1,000.00 shall be punished by a fine not to exceed \$500.00. Each violation, and each day that a violation continues, is a separate civil infraction.

(2) The civil infraction procedures in Tualatin Municipal Code Chapter 7-01 apply to the prosecution of any violation of the Public Works Construction Code.

**Section 2. Severability.** Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

**Section 3. Effective Date.** This ordinance is effective 30 days from the date of adoption.

ADOPTED by the City Council this 13<sup>th</sup> day of April, 2020.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

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

BY \_\_\_\_\_  
City Recorder