

**West Linn Code**

<b>TABLE 2</b>	
<b>BACKFLOW PREVENTION METHODS</b>	
USED FOR PREMISE ISOLATION	
<b>DEGREE OF IDENTIFIED HAZARD</b>	
Non-Health Hazard (Pollutant)	Health Hazard (Contaminant)
BACKSIPHONAGE OR BACKPRESSURE	BACKSIPHONAGE OR BACKPRESSURE
Air Gap (AG)	Air Gap (AG)
Reduced Pressure Principle Backflow Prevention Assembly (RP)	Reduced Pressure Principle Prevention Assembly (RP)
Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)	Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)
Double Check Valve Backflow Prevention Assembly (DC)	
Double Check-Detector Backflow Prevention Assembly (DCDA)	

**SYSTEMS DEVELOPMENT CHARGES**

**4.400 Purpose.**

Sections 4.400 to 4.485 are intended to provide authorization for systems development charges for capital improvements pursuant to ORS 223.297-223.314 for the purpose of creating a source of funds to pay for the installation, construction and extension of capital improvements. These charges shall be collected at the time of the development of properties which increase the use of capital improvements and generate a need for those facilities, or as otherwise provided in this code. [Section 4.400 amended by Ordinance No. 1416, enacted September 9, 1998.]

**4.405 Scope.** The system development charges imposed by sections 4.400 to 4.485 are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

**4.410 Definitions.**

For purposes of sections 4.400 to 4.485, the following mean:

Actual Project Cost. Cost of materials, land and construction directly attributable to the construction of a capital improvement. These costs include design, construction materials and equipment, labor, short term financing costs (incurred from the date of a City agreement on improvement cost estimate to date of written acceptance of improvement), project management costs (not to exceed 5% of actual project cost), and City administration fees for the project. Land cost is the real market value of fee-title or dedication, as determined by the County Assessor or by a City approved appraiser at the time of application for systems development charge credit. The method of land valuation and type of property interest to be conveyed is at the discretion of the City Engineer. [Definition added by Ordinance No. 1418 enacted September 9, 1998.]

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Capital improvements. Facilities or assets used for:

- (1) Water supply, treatment and distribution;
- (2) Sewage and wastewater collection, transmission, treatment and disposal;
- (3) Drainage and flood control;
- (4) Transportation; or
- (5) Parks and recreation.

City Manager. The person holding the office of City Manager or his/her designee. [Definition added by Ordinance No. 1416 enacted September 9, 1998.]

Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access.

Final Land Use Approval. A director's decision, subdivision, partition, design review or conditional use final decision approving an application which has either not been appealed at the City level, or which is the decision ending City appeal processes. If a City decision has been appealed to the Land Use Board of Appeals, the decision is final as of the date of the City decision which is appealed unless the Board has issued a stay of decision pursuant to ORS 197.845. [Definition added by Ordinance No. 1418 enacted September 9, 1998.]

Final Land Use Approval Modification. A final land use approval made after September 9, 1998, that changes a final land use approval by including new or expanded capital improvements eligible for SDC credits. [Definition added by Ordinance No. 1418 enacted September 9, 1998.]

Future Urban Area. The Future Urban Area (FUA) is the Study Area defined in the Tanner Basin Master Plan adopted by the city in October 1991.

[Definition added by Ordinance No. 1395, August 26, 1996.]

Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to section 4.415.

Land area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

Owner. The owner(s) of record title or the purchaser(s) under a recorded sales agreement, and other persons having an interest of record in the described real property.

Parcel of land. A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

Permittee. The person to whom a Building Permit, Development Permit, Permit to Connect to the sewer or water system or Right-of-Way Access Permit is issued.

Qualified Public Improvement. A capital improvement that is:

- (1) Required as a condition of development approval;
- (2) Identified in the plan adopted pursuant to section 4.435; and either
  - (a) Not located on or contiguous to property that is the subject of development approval; or
  - (b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular

development project to which the improvement fee is related.

[Definition amended by Ordinance No. 1395, August 26, 1996.]

Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 4.415.

System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, at the time of connection to the capital improvement or as otherwise provided in this code. "Systems development charge" includes that portion of a sewer or water systems connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities. "Systems development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision, expedited land division, or limited land decision.

[Definition amended by Ordinance No. 1416 enacted September 9, 1998; amended by Ordinance No. 1395, August 26, 1996.]

**4.415 System Development Charge Imposed; Method For Establishment.**

(1) Unless otherwise exempted by the provisions of sections 4.400 to 4.485 or other local or state law, effective July 1, 1991, a system development charge is hereby imposed upon all development in the city and the Future Urban Area at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at

the time of connection to a capital improvement.

(2) System development charges shall be established and may be revised by resolution of the city council. [Section 4.415 amended by Ordinance No. 1395, August 26, 1996.]

**4.420 Methodology.**

(1) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the council.

(3) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution.

**4.425 Authorized Expenditure.**

(1) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(2) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees

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must be related to demands created by current or projected development.

(3) A capital improvement being funded wholly or in part from revenues derived from system development charges shall be included in the System Development Charge Funding Project Plan adopted by the city pursuant to section 4.435.

(4) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

[Section 4.425 amended by Ordinance No. 1395, August 26, 1996.]

### **4.430 Expenditure Restrictions.**

(1) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

### **4.435 Project Plan.**

(1) The council shall adopt by resolution the Systems Development Charge Funds Project Plan. This Plan:

(a) Lists the capital improvements that may be funded with improvement fee revenues; and

(b) Lists the estimated cost and time of construction of each improvement.

(2) In adopting this plan the city council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The city may modify this

project plan at any time through the adoption of an appropriate resolution.

### **4.440 Collection of Charge.**

(1) For all single-family residential development and for multiple family residential, commercial and industrial development not eligible for credit for construction of a capital improvement, the improvement fee portion and the reimbursement fee portion of a systems development charge are payable upon issuance of:

(a) A building permit;

(b) A development permit for development not requiring the issuance of a building permit;

(c) A permit to connect to the water system;

(d) A permit to connect to the sewer system;

(e) A right-of-way access permit.

(2) For multiple family residential, commercial and industrial development eligible for credit for construction of a capital improvement, the improvement fee portion and the reimbursement fee portion of a systems development charge are payable upon issuance of:

(a) A building permit;

(b) A development permit for development not requiring the issuance of a building permit;

(c) A permit to connect to the water system;

(d) A permit to connect to the sewer system;

(e) A right-of-way access permit; unless payment of the improvement fee portion of the systems development charge is delayed pursuant to subsection (3) below.

(3) Payment of the improvement fee portion of a systems development charge for multiple family residential, commercial and industrial development eligible for credit for construction of a capital improvement may be delayed until a date

certain to be set by the City Manager at the time of building permit issuance or not later than 10 days after the issuance of a credit against the improvement fee pursuant to Section 4.455 or 4.457, whichever occurs first. The ability to delay payment of the improvement fee portion of a systems development charge shall only apply to those systems development charges which are for the use of the same type of capital improvement as the improvement being constructed by the multiple family residential, commercial and industrial development. For example, if a commercial development is constructing a water main, payment of the improvement fee portion of the water systems development charge may be delayed. All other applicable systems development charges must be paid pursuant to subsection (2) above. Delay of the payment is subject to the provisions of Section 4.442. [Subsection 4.440(3) amended by Ordinance No. 1395, August 26, 1996.]

(4) The resolution which sets the amount of the charge shall designate the permit or permits to which the charge applies.

(5) If a capital improvement is used, development is commenced, or a connection to a capital improvement is made without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.

(6) The City Manager shall collect the applicable systems development charge from the permittee.

(7) The City Manager shall not issue such permit or allow connection until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 4.445, unless an exemption is granted pursuant to Section 4.450 or unless the permittee has met the requirements of Section 4.442.

[Section 4.440 amended by Ordinance No. 1416 enacted September 9, 1998.]

#### **4.442 Delay of Payment.**

(1) A permittee eligible for delay of payment of a systems development charge pursuant to Section 4.440(3) shall make application to delay payment on a form provided by the City, prior to issuance of any permit described in Section 4.440(2). Payment of a systems development charge may only be delayed for the same development which is associated with the construction of the capital improvement for which credit is given.

(2) If a permittee applies for delay of payment of a systems development charge pursuant to Section 4.440(3), the permittee shall provide the City Manager with security acceptable to the City Manager to secure payment of the systems development charge. The security shall be in an amount determined by the City Manager, must be in a form approved by the City Attorney, and must accompany the application described in subsection (1) above. [Section 4.442 added by Ordinance No. 1416 enacted September 9, 1998.]

#### **4.445 Installment Payment.**

(1)(a) When a system development charge is due and payable, the permittee may apply for payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

(b) When a system development charge is due and payable, the permittee may apply for payment not to exceed 20 annual installments if the permittee is the City, including any City department, and the development will provide a public service.

[Section 4.445 (1) amended by Ordinance No. 1472, adopted and effective immediately on July 11, 2001.]

(2) The city manager shall provide application forms for installment payments, which shall include a waiver of all rights to

contest the validity of the lien, except for the correction of computational errors.

(3) A permittee requesting installment payments shall have the burden of demonstrating the permittee's authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.

(4) The city manager or designee shall docket the lien in the city lien docket and record the lien with the county pursuant to ORS 93.643. From that time, the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230. [Section 4.445(4) amended by Ordinance No. 1395, August 26, 1996.]

#### **4.450 Exemptions.**

(1) Structures and uses established and existing on or before the effective date of the resolution which sets the amount of the system development charge are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

(2) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the building code adopted pursuant to section 8.000 of this code, are exempt from all portions of the system development charge.

(3) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.

#### **4.452 Credits.**

Credits against a system development charge due pursuant to this Code are available pursuant to the provisions of Sections 4.453, Credit for Existing Use; 4.455, Credit Against Improvement Fee; and 4.457, Capital Improvement Credit. Credits may be obtained and utilized pursuant to Sections 4.452 through 4.457. [Section 4.452 added by Ordinance No. 1405 enacted June 9, 1997.]

#### **4.453 Credit for Existing Use.**

When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required; however, no refund or credit shall be given unless provided for by section 4.455. [Section 4.453 renumbered by Ordinance No. 1395, August 26, 1996; previously designated as Section 4.455 (1).]

#### **4.455 Credit Against Improvement Fee.**

(1)(a) When a person provides a capital improvement which is included in the Systems Development Charge Funds Project Plan to the City, and is eligible for a credit through the provisions of this Section and Section 4.457, a credit usable to satisfy systems development charge improvement fee obligations will be issued by the City.

(b) When a permittee seeks a credit for a qualified public improvement the following process and standards shall be applied:

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- (i) The maximum credit that will be allowed for a qualified public improvement will be the estimate for the improvement included in the Systems Development Charge Funds Project Plan, unless prior to the beginning of construction on the improvement the permittee and the City meet and establish a different estimate.
- (ii) The request for credit shall be filed by the permittee in writing no later than 60 days after written acceptance of the qualified public improvement by the City. The request shall be for not more than the agreed upon estimate or actual project cost, whichever is lower.
- (iii) Qualified public improvements which are located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related may be granted credit only for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The permittee shall have the burden of demonstrating that a particular improvement qualifies for credit pursuant to this subsection. The estimate required by this Section will be for only the cost of the oversized portion of the improvement.
- (c) When a permittee seeks a credit for a capital improvement that is not a qualified public improvement the following process and standards shall be applied:
- (i) Prior to beginning of construction on the capital improvement the permittee and the City shall meet and establish the maximum credit that will be allowed for the improvement. In an oversizing situation the restrictions in (b)(iii) apply.
- (ii) The request for credit shall be filed by the permittee in writing no later than 60 days after written acceptance of the improvement by the City. The request shall be for not more than the agreed upon estimate or actual project cost, whichever is lower.
- (d) When a person seeks a credit pursuant to West Linn Code Section 4.457, the provisions of that Section will be followed.
- [Subsection 4.455(1) amended by Ordinance No. 1418 enacted September 9, 1998; Subsection 4.455(1) renumbered 4.453 and amended by Ordinance No. 1395, August 26, 1996.]
- (2) The City shall evaluate a request for credit and determine that the amount of the credit to be issued does not exceed actual project cost, except as allowed by this Section.
- (a) If a request is related to a qualified public improvement and exceeds the preconstruction estimate the request shall be supported by documentation which establishes by clear and convincing evidence that the amount in excess of the estimate does not exceed actual project cost and that the excess cost was due to factors that could not have been reasonably anticipated by the permittee. The City Engineer shall evaluate the request and make a recommendation to the City Council on the appropriate credit due. The City Council shall consider the City Engineer's recommendation and the justification offered by the requestor and make a determination on the credit due.

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(b) For a request that is not related to a qualified public improvement the City Engineer shall review the documentation submitted to justify the request and determine the amount of credit due.

(c) If the actual project cost, verified by the City Engineer, is less than the preconstruction estimate, the amount of the credit shall be equal to the actual project cost plus one-half of the difference between the pre-construction estimate and the verified actual project cost.

[Subsection 4.455(2) amended by Ordinance No. 1418 enacted September 9, 1998.]

(3) The City shall issue a credit certificate in the amount determined pursuant to subsection (2). The credit certificate shall contain at a minimum the following information:

(a) The name of the person to whom the credit was issued and the project to which the improvement giving rise to the credit is related;

(b) The systems development charge to which the credit may be applied;

(c) The zone or zones in which the credit is useable;

(d) The issue date and the expiration date;

(e) The amount of the credit given;

(f) The original signature of the City Manager and the City Finance Director;

(g) A place for entry of the date of any transfer(s) of the certificate.

[Subsection 4.455(3) amended by Ordinance No. 1418 enacted September 9, 1998.]

(4) The city shall establish a system development charge credit list. Upon issuance of a credit certificate, the city shall enter onto the list the information contained in the certificate. No credit certificate shall be valid or may be redeemed unless there is an entry in the system development charge credit list which corresponds to the information on the

system development charge credit certificate.

(5) Credits given pursuant to this section are:

(a) Valid for a period of 10 years;

(b) Transferrable from the permittee to any other person. The bearer of the system development charge credit certificate issued by the city shall be the owner of those credits. A transferred credit shall contain a notation of the date(s) of transfer;

(c) Not refundable for cash or any other thing of value;

(d) Not available to a permittee who has entered an advanced financing agreement with the city pursuant to Section 3.150 to 3.120;

(e) Not transferable from one type of system development charge to another.

(f) Only useable to satisfy up to one-half of a systems development charge obligation if the credit had been issued for an improvement related to a project which received final land use approval after September 9, 1998, and is (1) tendered to satisfy a systems development charge obligation by a person other than the person to whom the credit was originally issued, or (2) is tendered by the person to whom the credit was originally issued to satisfy a systems development charge obligation that arises from a project other than the project related to the improvement for which the credit was originally issued.

(g) The credit use restriction of subsection (f) does not apply when the credit is tendered by a person other than the person to whom the credit was originally issued to satisfy a systems development charge obligation which arises from the same project for which the credit was originally issued.

(h) The credit use restriction of subsection (f) does apply to credits issued for improvements included in a final land use approval modification. The credit use restriction does not apply to credits issued

for improvements included in the final land use approval prior to the modification if that final land use approval was granted on or before September 9, 1998.

[Subsection 4.455(5) amended by Ordinance 1418 enacted September 9, 1998.]

#### **4.457 Capital Improvement Credit**

(1) Upon approval of the city council a person may pay money into a system development charge fund, for the purpose of funding in whole or in part a capital improvement listed on the project plan adopted by the city pursuant to section 4.435, and receive an SDC capital improvement credit in an amount approved by resolution of the city council. The capital improvement credit may be used to satisfy the improvement fee portion of a system development charge for the same fund for which the credit was issued.

(2) The credit certificate shall contain at a minimum the following information:

(a) The name of the person to whom the credit was issued;

(b) The systems development charge to which the credit may be applied;

(c) The zone or zones in which the credit is useable;

(d) The issue date and expiration date of the credit;

(e) The amount of the credit given and the capital improvement which was funded in whole or in part by the person;

(f) The original signature of the City Manager and the City Finance Director.

(g) A place for entry of the date of any transfer(s) of the certificate. [Subsection 4.457(2) amended by Ordinance 1418 enacted September 9, 1998.]

(3) Upon issuance of the capital improvement credit certificate, the city shall enter onto the city's system development charge credit list the information contained in the certificate. No credit certificate shall be valid or may be redeemed unless there is an entry in the system development

charge credit list which corresponds to the information on the system development charge credit certificate.

(4) The capital improvement credit certificate shall have the same characteristics and limitations as provided by Section 4.455(5) with the exception that capital improvement credit certificates may not be redeemed until the capital improvement for which the money was paid and the credit certificate issued has been completed and, if necessary, accepted by the city.

[Section 4.457 added by Ordinance No. 1405 enacted June 9, 1997.]

#### **4.460 Segregation and Use of Revenue.**

(1) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds by the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this ordinance.

(2) The city manager shall provide an annual accounting, based on the city's fiscal year, of system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account.

#### **4.465 Appeal Procedure.**

(1) A person aggrieved by a decision required or permitted to be made by the city manager under sections 4.400 to 4.485 or a person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city manager describing with particularity the decision of the city manager or the expenditure from which the person appeals.

(2) An appeal of an expenditure must be filed within two years of the date of

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the alleged improper expenditure. Appeals of any other decision must be filed within 30 days of the date of the decision.

(3) The council shall determine whether the city manager's decision or the expenditure is in accordance with sections 4.400 to 4.485 and the provisions of ORS 223.297 to 228.314 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year of the date of that determination to the credit of the account or fund from which it was spent.

(4) A legal action challenging the methodology adopted by the council pursuant to sections 4.415 and 4.420 shall not be filed later than 60 days after the adoption.

(5) A person may request that the City Council issue systems development charge credits to them as compensation for the impact of the limitation of use of transferred credits provisions of 4.455(5)(f) if;

(a) The person has received the credit for a qualified public improvement;

(b) The credit amount received exceeded the systems development charge obligation for the original development project and all subsequent phases of the original development project; and,

(c) The person has transferred the credits, establishes that the value received for the transferred credit was less than face value, and that the reduction in value was directly caused by the limitation in 4.455(5)(f).

The request pursuant to this subsection must be filed with the City within 30 days of the date of the transfer of the credit. The Council will consider the request and if it finds that the value of the credit has in fact been reduced it shall offer compensation for the reduction in the form of additional credits for the system for which the credit

was originally issued. [Subsection 4.465(5) added by Ordinance No. 1418 enacted September 9, 1998.]

### **4.470 Prohibited Connection.**

No person may connect to or utilize the capital improvements of the city unless the appropriate system development charge has been paid. [Section 4.470 amended by Ordinance No. 1395, August 26, 1996.]

### **4.475 Effect of Annexation.**

The amount of system development charges for any parcel within the Future Urban Area zone will be unaffected by annexation. The charges have been computed based upon the boundary defined in the current methodology. This boundary will remain unchanged by annexation and therefore the related system development charges will remain unchanged. [Section 4.475 amended by Ordinance No. 1395, August 26, 1996.]

### **4.480 Penalty.**

Violation of sections 4.400 to 4.485 is a class A infraction punishable by a fine not to exceed \$500.

### **4.485 Construction.**

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of sections 4.400 to 4.485.

## **SOLID WASTE REGULATIONS**

### **4.500 Rental Property Requirements.**

The owner of any residence or multifamily building who rents, leases or lets dwelling units for human habitation shall arrange for solid waste, recyclable materials, and yard debris collection in compliance with (1) or (2) below:

(1) Comply with (a) through (c) below:

(a) Provide a sufficient number of receptacles of adequate size to prevent the overflow of solid waste, recyclable materials